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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 195 .

NO. 822

PAUL S. WOOLLEY,

Petitioner,

versus

EASTERN AIR LINES, INC., ET AL.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

INDEX

PAGE

Complaint 1

Plaintiff's Exhibit #1—Agreement between Eastern Air Lines, Inc., and The Air Lines Pilots in the Service of Eastern Air Lines, Inc., etc., Effective July 1, 1954 15

Plaintiff's Exhibit #2—Letter, Paul S. Woolley to S. L. Shannon, dated 7/28/50 86

Plaintiff's Exhibit #3—Letter, Eastern Air Lines, Inc., to Capt. Paul S. Woolley, dated 2/20/56 87

Plaintiff's Exhibit #4—Decision of the Board of Adjustment, dated 8/1/56 88

Answer of Defendants, Air Line Pilots Association, International, et al., to Complaint 89

Exhibit "A"– Hearing before the System Adjustment Board, Eastern Air Lines, Inc., on June 20, 1956 99

Statement made by Mr. Rivenbark 100

Statement made by Mr. Bennett 101

Statement made by Mr. Harlan 104

Evidence on Behalf of Eastern Air Line Pilots Association:

Testimony of Paul S. Woolley 106

Evidence on Behalf of Eastern Air Lines Inc.:

Testimony of Sidney L. Shannon 134

Sidney L. Shannon (Resumed) 139

Exhibit (not marked)—Official Report, dated 2/10/56 155

Exhibit (not marked)—Letter from Civil Aeronautics Administration to Sidney L. Shannon, dated 2/21/56 156

INDEX—Continued

PAGE

Answer of Defendants, etc.—(Continued):
Exhibit "A", etc.—(Continued):
Evidence, etc.—(Continued):
Testimony of S. L. Shannon—(Cont'd.):
Exhibit (not marked)—Official ATC Transcript 157
Exhibit (not marked)—Memo from the file of L. H. Dice, dated 6/8/55 addressed to Capt. G. C. Diggs 162
Exhibit (not marked)—Letter, R. G. Burstrom to Capt., Diggs 163
Exhibit (not marked)—Letter, Robert C. Hutton, Aviation Safety Agent Attn., George H. Roerig, dated Feb. 20 169
Testimony of Watson T. Babbitt 173
Jerome E. Wood 176
Robert Gunnard Burstrom 179
Welton Robert Hughes .. 196
Gerald Cleatus Tew 240
Addie B. Scarborough ... 245
L. H. Dice 249
Evidence on behalf of Eastern Air Line Pilots Association:
Testimony of Paul S. Woolley (Recalled) 258
J. A. Duncan 279
Evidence on behalf of Eastern Air Lines, Inc.:
Testimony of Welton Robert Hughes (Resumed) 312
Colloquy between Court and Counsel 320

INDEX—Continued

PAGE

EXHIBITS:

Pilot's Exhibit #1—Photostat of Computation of Speeds and Times 323

Exhibit (not marked)—Letter, R. G. Burstrom addressed "To Whom It May Concern", not dated 324

Exhibit (not marked)—Letter, W. F. Hughes, Co-Pilot Eastern Air Lines, Inc., to Capt. F. A. Stone, Supt. of Flight Operations Eastern Air Lines, dated 2/16/56 326

Company's Exhibit #3—Photostat of Flight Log for trip 647 of February 6, 1956 331

Exhibit (not marked)—Record No. D4 2-6-56 0524E TM 332

Exhibit (not marked)—Photostat of Map—Logan Airport, Boston, Mass. 338

Exhibit (not marked)—Memo. from L. M. Dice to Capt., G. C. Diggs, dated 6/8/55 340

Motion of Defendants, Air Line Pilots Association, International, et al., for Summary Judgment .. 340

Answer of Defendants, Eastern Air Lines, Inc., et al., to Complaint 342

Exhibit "A"—"Incident Report" filed by the Chief Controller of the Detroit (Willow Run) Tower to the Regional Administrator of the Civil Aeronautics Administration .. 350

Exhibit "B"—Detailed Report, dated 2/24/50 .. 352

Exhibit "C"—Office Memorandum from Capt., P. S. Woolley to Capt., P. L. Foster, dated 2/7/50 354

Exhibit "D"—Memorandum of Discharge from J. M. Halliburton to Capt., Paul S. Woolley, dated 2/13/50 355

INDEX—Continued

PAGE

EXHIBITS—(continued):

Exhibit "E"—Letter, Capt. Paul Wooley to Eastern Air Lines, Inc., dated 2/17/50 356

Exhibit "F"—Letter, John J. Halliburton to Paul S. Woolley, dated 2/21/50 357

Exhibit "G"—Letter, Eastern Air Lines, Inc., to Paul S. Woolley, dated 3/3/50 358

Exhibit "H"—Letter, Paul S. Woolley to Eastern Air Lines, Inc., dated 3/10/50 361

Exhibit "I"—Letter, B. F. Shannon to Paul S. Wooley, dated 3/31/50 362

Exhibit "J"—Letter, Air Line Pilots Association to R. W. Rivenbark, Chairman, Eastern Air Lines, Inc., etc., dated 4/3/56 363

Submission Exhibit #1—Letter, Eastern Air Lines, to Capt. Paul S. Woolley, dated 2/20/56 366

Submission Exhibit #2—Letter, Paul L. Woolley to S. L. Shannon, dated 2/27/56 367

Submission Exhibit #3—Letter, Eastern Air Lines to Paul S. Woolley, dated 2/27/56 .. 368

Submission Exhibit #4—Letter, S. L. Shannon to Capt. Paul S. Woolley, dated 3/2/56 .. 369

Recitation as to Exhibit "K" same as Exhibit "A" attached to Answer of Defendants' Air Line Pilots Association, International 369

Motion of Defendants, Eastern Air Lines, Inc., et al., to Dismiss and for Summary Judgment 370

Motion of Plaintiff for Summary Judgment 372

Exhibit (not marked)—Letter, Air Line Pilots Association "To All ALPA Members of Eastern Air Lines," dated 2/23/50 377

Summary Judgment, entered 12/4/56 380

INDEX—Continued

	PAGE
Final Judgment, entered 12/4/56	385
Motion of Plaintiff for New Trial	385
Motion of Air Line Pilots Association, et al., to strike Plaintiff's Motion for New Trial	399
Opposition of Defendants, Eastern Air Lines, Inc., et al., to Plaintiff's Motion for New Trial	400
Order entered 1/10/57 Denying Plaintiff's Petition for Rehearing, styled "Motion for New Trial, etc."	402
Notice of Appeal	403
Appeal Bond	404
Petition and Order entered 2/12/57 transmitting Original Exhibits to Appellate Court	406
Appellant's Designation of Contents of Record on Appeal	410
Clerk's Certificate	413

On September 21, 1956 COMPLAINT was filed in the words and figures as follows:

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION.

No. 7173-M-Civ.

PAUL S. WOOLLEY,

Plaintiff,

versus

EASTERN AIR LINES, INC., a Delaware corporation, THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, an Association having its principal place of business in Chicago, Illinois, and R. W. RIVENBARK, S. L. SHANNON, GEORGE A. SMITH and R. M. TEDLOCK, individually and as and constituting the members of the EASTERN AIR LINES PILOTS SYSTEM BOARD OF ADJUSTMENT, under the Railway Labor Act, 45 USCA, Paragraph 184, and Section 3 of 45 USCA, Paragraph 153, under agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by The Air Lines Pilots Association, International,

Defendants.

Comes now Paul S. Woolley, plaintiff, and files this his Complaint against Eastern Air Lines, Inc., a Delaware corporation, The Air Line Pilots Association, International, an Association having its principal place of business in Chicago, Illinois, and R. W. Rivenbark, S. L. Shannon, George A. Smith and R. M. Tedlock, in-

dividually and as and constituting the members of the Eastern Air Lines Pilots System Board of Adjustment, under the Railway Labor Act, 45 USCA, Paragraph 184, and Section 3 of 45 USCA, Paragraph 153, under agreement between Eastern Air Lines, Inc., and The Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by The Air Lines Pilots Association, International, and complaining says:

I.

Plaintiff is a resident of Dade County, State of Florida, and is and has been for a number of years last past, an air line pilot in the employ of Eastern Air Lines, Inc. At the time of the acts complained of herein, plaintiff was employed at Miami, Florida, as base of operations with the rank of captain under grades and ratings established under contract, provisions and regulations fixed by agreement between Eastern Air Lines, Inc. and the Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by The Air Lines Pilots Association, International, under agreements which have been modified from time to time, the last agreement being effective July 1, 1954 and continuing thereafter to the present time.

II.

Defendant Eastern Air Lines, Inc., as the employer, is a corporation organized under the laws of the State of Delaware but authorized and qualified to do businesses in the State of Florida.

The Air Line Pilots, of which plaintiff is one, constitute the third party beneficiaries under the collective

bargaining agreements hereinafter referred to, and the Air Line Pilots, of which plaintiff is one, were represented under the laws of the United States of America by The Air Line Pilots Association, International, an Association with its principal place of business in Chicago, Illinois, which is the bargaining and collective permanent agent under the Statutes of the United States of America representing the Air Line Pilots of which plaintiff is one.

Defendant R. W. Rivenback, S. L. Shannon, George A. Smith and R. M. Tedlock are members of the Eastern Air Lines Pilots System Board of Adjustment under the contract effective July 1, 1954, hereinafter referred to, and R. W. Rivenbark is chairman of said Board.

The meetings and actions hereinafter complained of took place at Miami, Dade County, Florida, in the year 1956.

Defendant R. W. Rivenbark is a resident of Dade County, Florida and is an employee of Eastern Air Lines, Inc., with Miami, Florida as his headquarters.

Defendant S. L. Shannon is Senior Vice-President of Eastern Air Lines, Inc., and is stationed at and resides in Dade County, Florida.

Defendant George A. Smith is Assistant to the Senior Vice-President of Eastern Air Lines, Inc., and is a resident of Dade County, Florida.

Defendant R. M. Tedlock is an employee of Eastern Air Lines, Inc., and is a resident of and is based, so far as operations are concerned, in Atlanta, Georgia.

III.

The jurisdiction of this Court is invoked by several factors—

a. Diversity of citizenship between plaintiff, a resident of Dade County, Florida, and Eastern Air Lines, Inc., which is the chief defendant, the employer, a corporation organized and existing under the laws of Delaware and organized to do business in Dade County, Florida, and a civil claim in controversy of more than $3,000.

b. Under the provisions of Section 204 of Title 2 of the Railway Labor Act, 45 USCA, Paragraph 184, and Section 3 of the Act, 45 USCA, Paragraph 153, in that this cause involves determination of a dispute between Eastern Air Lines, Inc., an air carrier covered under the provisions of the Railway Labor Act aforementioned, and plaintiff, as an employee under the provisions of said Act. The contract hereinafter alleged and set forth was an agreement made under the provisions and authority of said Act covering rates of compensation, hours of work, working conditions and the procedure for the orderly settlement of any disputes, and Eastern Air Lines Pilots System Board of Adjustment was an official administrative Board set up under and by virtue of the authority and provisions of the said Federal Act as above set forth.

A true copy of the printed agreement above referred to is hereto attached, marked Plaintiff's Exhibit 1, and made a part hereof as if fully set forth herein.

IV.

Plaintiff respectfully shows unto the Court that he became an employee of Eastern Air Lines, Inc., as a pilot on or about November 15, 1936 and has been in their employ ever since. Plaintiff's rating is that of a captain, and at the time of the happening of the events hereinafter set forth, plaintiff was in approximately the 72nd position in seniority in the entire Eastern Air Lines, Inc., system, and by reason thereof was enjoying the emoluments not only of his position as a captain, but his seniority rights, and was enjoying and is entitled to enjoy other benefits, both direct and fringe, covered under the contract, Plaintiff's Exhibit 1, as well as certain mutual benefits derived by reason of his employment under the contract for insurance and retirement on pension plan protection.

V.

Plaintiff would show unto the Court that while employed by Eeastern Air Lines, Inc., and pursuant to his line of duties, and while protected by a similar contract of which the existing contract is more or less a repetition, plaintiff had an operational dispute with the management of Eastern Air Lines, Inc. on or about January 29, 1950 because of a dispute about the operation of Flight No. 703, Eastern Air Lines, Detroit, Michigan, on January 29, 1950. Plaintiff was suspended from flight operations pending an investigation and hearing upon the alleged claims of irregular operation.

At that time the Eastern Air Lines Pilots System Board of Adjustment was in effect under the terms of an agreement similar to the one attached hereto, marked

Plaintiff's Exhibit 1, but under said suspension order which was contested by plaintiff, the procedure had not yet reached the stage where it was heard by the System Adjustment Board.

VI.

Plaintiff further shows that on January 29, 1950, while acting as captain in charge of Flight No. 703, a tower operator, being one of the operators in the control tower which is provided for and controlled by the Civil Aeronautics Authority of the Federal Government, wrote a letter to Eastern Air Lines, Inc., complaining that plaintiff, as captain of and in command of the said Flight No. 703, had, in effect, not permitted sufficient interval of time to pass for a preceding airplane to take off on the runway, and that by reason thereof plaintiff, in command of his flight, took an improper turn as an emergency, and brought his airplane too close to the control tower.

Plaintiff would show unto the Court that appropriate emergency reports were filed with full explanation of the event, and that no charge was filed by the Civil Aeronautics Authority after the explanation in the emergency report had been filed. The Civil Aeronautics Authority accepted the explanation of the emergency report, but for approximately six weeks after the said date of January 29, 1950 Eastern Air Lines, Inc. refused to accept the same explanation.

VII.

Plaintiff would show unto the Court that although certain conferences had taken place and plaintiff in the

meanwhile was suspended from operations, Eastern Air Lines Pilots System Board of Adjustment had not had an opportunity of hearing the complaint. Pending the hearing before the System Board of Adjustment, in conference with one of the junior operating officials of Eastern Air Lines, Inc., both plaintiff and said defendant found they could not reach satisfactory accord, plaintiff contending that he was without fault and the junior operating official refusing to accept said explanation. The matter was then referred for hearing before the senior operating officer, which was the next step in the procedure prior to hearing before the System Board of Adjustment.

The hearing before the Senior Operating Officer never took place, but in the meanwhile Union representatives who were representing plaintiff, entered into certain negotiations in lieu of the extensive hearings to be heard before the Board of Adjustment, and reported to plaintiff and recommended that as an easy way out of the difficulty, plaintiff accept a six months suspension order with pay, but without loss of seniority privileges or other fringe benefits which were a part of the contract; that the part of the six months suspension without pay would be absorbed by the time which had already passed, and the suspension order would date from January 29, 1950, with the suspension period to expire on July 28, 1950. Rather than go through complicated hearings, in view of this compromise agreement which had been reached, plaintiff accepted that proposal without ever discussing the matter with the senior operating official.

VIII.

However, as a part of that settlement, plaintiff was advised by the Union representatives that before actually

commencing flying again after July 28, 1950, Eastern Air Lines, Inc. would insist that plaintiff sign some type of a resignation. The type of letter or purpose of same was not explained to plaintiff.

IX.

Plaintiff further shows unto the Court that on or about July 28, 1950, and at a time when plaintiff was about to commence his regular runs, someone on behalf of Eastern Ari Lines, Inc. prepared a letter which was dated July 28, 1950, a copy of which is attached hereto, marked Plaintiff's Exhibit 2 and made a part hereof. The said letter was presented to plaintiff by Mr. S. L. Shannon, Vice-President of Operations of Eastern Air Lines, Inc., at his office in Miami, Florida. The said Shannon told plaintiff that as soon as he signed this letter he would be put back into active service, and that he could go to work immediately.

X.

Plaintiff then arranged for an instrument check, which was required every six months, and he took the said check on July 21, 1950. He then was assigned back to his regular operational runs, his first flight being on August 3, 1950. From the date of August 3, 1950 up until Febraury 6, 1956, plaintiff was continued in his employment as a captain in Eastern Air Lines, Inc., with operational working conditions and seniority rights and rights to continue employment all being based under the contract in which plaintiff was a third party beneficiary as above set forth.

XI.

On February 20, 1956 plaintiff received a letter from Eastern Air Lines, Inc., a true copy of which is hereto attached, marked Plaintiff's Exhibit 3, and made a part hereof. In substance said letter stated:

"In reference to your letter of resignation dated July 28, 1950, please be advised that I, personally, feel that you have not been handling your job in the proper manner and, therefore, your resignation as a employee of Eastern Air Lines, Inc. is hereby accepted and to become effective immediately.

Please contact your Chief Pilot regarding any matters connected with this termination of your employment with the company."

XII.

The matter was referred in consecutive steps to the Senior Vice-President in Charge of Operations of Eastern Air Lines, Inc. and then to the Eastern Air Lines Pilots System Board of Adjustment, with appropriate objections made to the method and manner of the handling of the so-called discharge. It was contended then, that is to say, before the Senior Vice-President and before the System Board of Adjustment, that a resignation dated July 28, 1950 as a condition of re-employment and not as a condition for immediate discharge, and without having any present purpose of terminating the employment, was void and of no effect, and contravened both the letter and the spirit of the Railway Labor Act and the spirit and letter of the right protected and guaranteed to plaintiff under the provisions of the laws of the United States

and under the terms of the duly authorized contract above mentioned, of which plaintiff was a third party beneficiary.

XIII.

Notwithstanding the objection made that the System Board of Adjustment had no power or jurisdiction to pass upon the legal effect of the discharge letter of February 20, 1956 which related solely to the right of Eastern Air Lines, Inc. to accept a resignation of July 28, 1950, and notwithstanding the objection duly and timely made that such an action was beyond the purview of the jurisdiction of the said System Board of Adjustment, and that there were no adequate charges upon which hearing could be had for discharge for cause within the terms of the said agreement of July 1, 1954, the said Eastern Air Lines Pilots System Board of Adjustment continued with the hearing beginning at 9 o'clock A.M. June 20, 1956 in the Hunt Room, Miami Springs Villas, Miami Springs, Dade County, Florida, which said hearing resulted in the entry of a decision at Miami, Florida, on August 1, 1956, a true copy of which is attached hereto, marked Plaintiff's Exhibit 4 and made a part hereof.

XIV.

Plaintiff further shows unto the Court that the alleged resignation letter of July 28, 1950 was not given by plaintiff with the idea or intent that it would sever his employment relationship with defendant Eastern Air Lines, Inc., nor was it demanded by or received by Eastern Air Lines, Inc. for the purpose of or with intent of severing the employment contract. Said letter and the

purported resignation contained therein was a scheme or artifice employed by defendant to illegally avoid the rights of plaintiff as an air carrier pilot and to circumvent those vested rights fixed under the Railway Labor Act as amended for the protection of air line carrier pilot employees. The said actions of defendant Eastern Air Lines, Inc. were contrary to public policy and contrary to the intent, letter and spirit of the Railway Labor Act. A purported resignation of an employee as a condition for continuation of employment under the Railway Labor Act is null and void from the beginning, if it was not given with the intent to sever the then existing connections. Thereafter and beginning as of the first flight of August 3, 1950 plaintiff's employment came under the provisions of the Railway Labor Act, and he became the subject matter of a third party beneficiary under the then existing agreement between Eastern Air Lines, Inc. and The Air Line Pilots Association, International.

Plaintiff shows that he continued from that time up under the present time as an employee under the terms and conditions of the contract and the Railway Labor Act, and that he has a vested right in being protected in that employment and is entitled to have a decree protecting plaintiff's right as an employee under said contract until duly and properly discharged within the purview of the terms and conditions of that contract; that because of the peculiar provisions of the Railway Labor Act plaintiff is entitled to have said contract specifically performed by Eastern Air Lines, Inc. until those rights have been terminated in accordance with law.

XV.

Plaintiff would further show unto the Court that he has not been discharged within any of the provisions of

Section 29 of said contract, nor has Eastern Air Lines Pilots System Board of Adjustment or Eastern Air Lines, Inc. or The Air Line Pilots Association, International, afforded to plaintiff any type of hearing or made any findings as to right of discharge which are provided under the terms and conditions of the contract as a basis for discipline or discharge.

XVI.

Plaintiff shows unto the Court that the decision of August 1, 1956 was entered by Eastern Air Lines Pilots System Board of Adjustment without any authority, and was based upon an assumed matter of law over which the Board had no jurisdiction, and that the Act of said System Board of Adjustment and the individual members thereof and Eastern Air Lines, Inc. in discharging or purporting to discharge plaintiff for the causes set forth therein, was an abuse of their discretion and an abuse of their jurisdiction; that said action was arbitrary and without foundation and should be set aside by appropriate order of the said Board under directions of this Court.

Plaintiff therefore requests and prays:

1. That this Court will entertain his cause and enter a declaratory decree as to the rights of plaintiff herein, and will enter a declaratory decree construing whether or not under the contract referred to as Plaintiff's Exhibit 1, Eastern Air Lines, Inc. and/or the said Eastern Air Lines Pilots System Board of Adjustment had a right to deprice plaintiff of vested rights upon the matters and things set forth therein.

2. That pursuant to Rule 81 of the Federal Rules of Civil Procedure, in which the direct writ of mandamus

is abolished but rights are granted for the pursuit of similar remedies, plaintiff prays that this Court will take jurisdiction of this cause in the nature of a mandamus action and will by mandatory injunction direct—

a. That Eastern Air Lines Pilots System Board of Adjustment and the four members thereof as herein named, shall meet forthwith and cancel and discharge their order of August 1, 1956 as having been entered erroneously and without jurisdiction and without probable cause.

b. That defendant Eastern Air Lines, Inc. will be directed by this Honorable Court, upon the setting aside of the decision of the Board of August 1, 1956, to reinstate plaintiff to his full rights of seniority and other benefits provided under the contract, Plaintiff Exhibit 1; that upon the happening of the above events, this Court will direct that plaintiff be restored to all back salary and fringe benefits by way of seniority, and that plaintiff's rights will be protected unless and until the said Eastern Air Lines, Inc. shall have filed an appropriate order of discharge for cause, and the defendant Eastern Air Lines Pilot System Board of Adjustment has had a complete and adequate hearing within the confines of its jurisdiction and either granted or denied the grievance complained of, if any, for cause.

3. Plaintiff prays for the issuance of such other and further writs or process in conformity with the provisions of Rule 81, Federal Rules of Civil Procedure, as shall to this Court be deemed meet and proper.

PAUL S. WOOLLEY,
(Paul S. Woolley),
Plaintiff.

WARD & WARD,
By W. S. WARD,
Attorneys for Plaintiff.

1240 duPont Building,
Miami, Florida.

State of Florida,
County of Dade, ss.

Paul S. Wooley, being first duly sworn, on oath deposes and says that he has read the foregoing complaint by him subscribed; that the matters and things therein set forth are true.

PAUL S. WOOLLEY.

Sworn to and subscribed before me this 21st day of September, 1956.

BESSIE C. BREYER,
Notary Public, State of Florida
at large.

My commission expires:

(Illegible).

PLAINTIFF'S EXHIBIT 1.

Eastern Air Lines, Inc.

Agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the service of Eastern Air Lines, Inc. as represented by The Air Line Pilots Association. International Governing Rates of Compensation, Hours of Work, Working Conditions, and a Procedure for the Orderly Settlement of any Disputes.

Effective July, 1, 1954.

Subject Index.

This index is for general reference only. It is not intended as a complete index for contract interpretation purposes.

Subject	Section	Page
Absence, Leaves of	22	43
Agreement—		
Distribution	44	77
Duration	46	77
Prior Agreements	45	77
Successor or Merged Companies	42	76
Base Pay	3	22
Benefit Assignments	37	72
Copilot—		
Definition	2D	19
Pay	11	31
Damaged Equipment, Pay for Cost of	41	76
Day Flying—Definition	2F	20
Deadheading	12	32
Definitions	2	19
Duration of Agreement	46	77

Subject	Section	Page
Expenses—		
Foreign and Overseas	33	69
Moving	15	35
Traveling	14	34
First Pilot—		
Definition	2B	19
Mileage Pay	7, 8	24
Serving as Copilot	9A,B	26
Flying Pay—Definition	2H	20
Flying Pay Purposes—Definition	2I	20
Flying Time—Definition	2J	20
Foreign and Overseas Operations—Definition	2L	21
Grievances	30	65
Gross Weight Pay	6	24
Hourly Pay Computation	4, 5	22
Hours of Service	17	39
Investigation and Discipline	29	62
Appeal	29B	63
General	29C	64
Hearing	29A	62
Mile—Definition	2N	22
Miscellaneous Flying	13	33
Missing Pilots	36	71
Month—Definition	2G	20
Night Flying—Definition	2F	20
Off-Shore Operation—Definition	2M	21
Orders in Writing	39	76
Pay—		
Copilot	11	31
Foreign and Overseas	32	68
Minimum Guarantee	10A	27
Off-Shore Operation	34	70
School Guarantee	27	49
Physical Examination	31	66
Pilot—Definition	2A	19

Subject	Section	Page
Pilot Base—Definition	2K	21
Pilot Division—Definition	2E	19
Probation Period	21	43
Recognition	1	18
Reserve Pilot—Definition	2C	19
School Pay Guarantee	27	49
Seniority—		
Date	26	49
General	18	42
List, Protest	20	43
Loss of	24	47
Promotions	25	47
Sickness and Injury	38	74
Training Conducted by Company	40	76
Transfer to Non-flying or Supervisory Duty	23	46
Uniforms. Change in	43	76
Vacancies, Filling of	28	50
Activating Section 28	28L	59
Annual Statement of Requirements	28B	51
Annual Transfers	28M	59
Assignment of Flying at a Base	28I	57
Bulletining of Permanent Base Vacancies	28D	53
Curtailment or Closing of Base	28F	55
Determination of Pilot Requirements	28C	51
Mutual Transfer of Base	28H	57
Objective	28A	50
Opening New Base	28K	59
Permanent Base Vacancies	28E	54
Reserve Flying	28J	59
System and Base Scheduling	28N	60
Temporary Vacancies	23G	56
Transfer of Pilots	28O	61
Vacations	16	36
Workmen's Compensation Benefits	35	71

Agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the service of Eastern Air Lines, Inc. as represented by The Air Line Pilots Association, International.

This agreement is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between Eastern Air Lines, Incorporated, hereinafter known as the "Company" and the Air Line Pilots in the service of Eastern Air Lines, Incorporated, as represented by the Air Line Pilots Association, International, hereinafter known as the "Association".

It is hereby mutually agreed:

Recognition:

Section 1.

The Air Line Pilots Association, International, has furnished to the Company proof that a majority of the Air Line Pilots employed by the Company have designated the Association to represent them and in their behalf negotiate and conclude an agreement with the Company as to hours of labor, wages, and other employment conditions covering the pilots in the employ of the Company in accordance with the provisions of the Railway Labor Act, as amended.

Definitions:

Section 2.

As used in the Agreement, the term:

A. "Pilot" means first pilot, reserve pilot and copilot as defined herein and unless otherwise stated herein shall mean all classifications.

B. "First Pilot" means an employee who is in command of the aircraft and its crew members while on duty, and who is responsible for the manipulation of, or who manipulates, the flight controls of an aircraft while under way including the take-off and landing of such aircraft, and who is properly qualified to serve as, and holds currently effective airman's certificates authorizing him to serve as such pilot.

C. "Reserve Pilot" means an employee who has been checked out and designated by the Company as qualified, to serve as first pilot and who holds currently airman's certificates authorizing him to serve as such first pilot, but who is not assigned to a regular run as a first pilot.

D. "Copilot" means an employee who is second in command and any part of whose duty is to assist or relieve the first pilot in the manipulation of the flight controls of an aircraft while under way, including take-off and landing of such aircraft, and who is properly qualified to serve as, and holds currently effective airman's certificate authorizing him to serve as such copilot.

E. "Pilot Division" means that portion of a route or alternate thereof over which a pilot is regularly scheduled.

F. "Day Flying" means all flying between hours of 6:00 A.M. and 6:00 P.M. standard time, and "Night Flying" means all flying between the hours of 6:00 P.M. and 6:00 A.M. standard time. In all cases, the time of departure uesd herein shall be the time of block departure of the airplane. When changes in the time zone occur in flight, the time zone at the station of last take-off shall be used in computing the day and night flying time for that leg of the trip.

G. "Month" means the period from and including the first day of, to and including the last day of each calendar month of the year.

H. "Flying Pay" means hourly, mileage and gross weight pay, also "Foreign and Overseas" and "Offshore" pay, wherever applicable.

I. "Flying Pay Purposes" means hourly, mileage and gross weight pay, also "Foreign and Overseas" and "Offshore" pay wherever applicable on schedules and extra section flights and the following non-scheduled flights, namely: publicity, charters, scenic attempts, rerouted flights, ferries, engine, instrument, plane, and radio test flights, experimental and airway aid test flights for which pilots receive pay in accordance with pay differentials outlined in this Agreement.

J. "Flying Time" means that period of time beginning when an aircraft first moves from the ramp blocks under its own power for the purpose of flight and ending when the aircraft comes to a stop at the ramp for the purpose of loading or unloading, following such flight.

K. "Pilot Base" means any place where pilot personnel are regularly domiciled for flight duty purposes.

L. "Foreign and Overseas Operation" means the Company's operation carried on by it, between points outside the continental limits of the United States, and such operation shall include the flying performed by pilots between points within the continental United States and points outside the continental United States; provided, however, that the provisions of this paragraph will not apply to flying between points within the continental limits of the United States, or between points in Canada or between points in Mexico, or between points in Canada and points within the continental limits of the United States, or between points in Mexico and points within the continental limits of the United States where such flying is not on a direct over-water course between Mexico and points east of Baton Rouge, Louisiana. On flights between the continental United States and points outside thereof the Foreign and Overseas flying shall be only the flying actually performed between the outside point or points and the stop or mutually agreed upon check points in the continental United States which is nearest to the United States shoreline on the route flown.

M. "Off-shore Operation" means the Company's flights between points within the continental limits of the United States where such flights are scheduled to be and are actually flown on established routes over the ocean or the Gulf of Mexico where such established routes are, at any point, more than fifty (50) miles from the nearest portion of the continental United States, provided however that this paragraph shall not apply to any such filghts unless and until the route or routes to be flown and the mileage from point of leaving shore to point of

returning to shore are definitely established and mutually agreed upon elsewhere in this Agreement or in supplements thereto.

N. "Mile" means a statute mile of 5,280 feet.

Base Pay:

Section 3.

All pilots shall receive monthly base pay (flat pay where indicated) in accordance with their total aggregate of accredited service with the Company as a pilot (including first pilot, reserve pilot and copilot) as follows:

First year	$375.00 per month (flat pay)
Second year	475.00 per month (flat pay)
Third year	250.00 per month
Fourth year	270.00 per month
Fifth year	290.00 per month
Sixth year	310.00 per month
Seventh year	330.00 per month
Eighth year and thereafter	350.00 per month

Hourly Pay Computation:

Section 4.

In addition to base pay, each first pilot or reserve pilot when acting as first pilot, for flying pay purposes, shall be paid hourly flying pay at rates based upon the speed of the equipment flown, and whether such flying is day or night as follows:

	Day per. hr.	Night per. hr.
Under 125 MPH	$4.70	$ 7.05
125 up to but not including 140 MPH	4.90	7.35
140 up to but not including 155 MPH	5.10	7.65
155 up to but not including 175 MPH	5.30	7.95
175 up to but not including 200 MPH	5.50	8.25
200 up to but not including 225 MPH	5.70	8.55
225 up to but not including 250 MPH	5.90	8.85
250 up to but not including 275 MPH	6.10	9.15
275 up to but not including 300 MPH	6.30	9.45
300 up to but not including 325 MPH	6.50	9.75
325 up to but not including 350 MPH	6.70	10.05

Section 5.

A. In computing the hours of first and reserve pilots when acting as first pilots for flying pay purposes, the actual flying time as defined in Section 2 J shall be used whenever this time is greater than the scheduled time shall be used on all scheduled, and extra section time; otherwise the scheduled time shall be used on all scheduled, and extra section flights and actual flying time shall be used on all non-scheduled flights, and the average speed shall be not less than 155 MPH for Douglas DC-3, 200 MPH for Dougas Skymaster DC-4, 225 MPH for Martin 404, 250 MPH for Lockheed Constellation L-749 equipment, 275 MPH for Lockheed L-1049 and L-1049C equipment, 275 MPH for Douglas DC-6B equipment and 300 MPH for Douglas DC-7 and DC-7B equipment. In computing additional pay for night flying, the actual night hours shall be used as defined in section 2 F.

B. For the purpose of this section, non-scheduled flights shall be construed to mean flights defined as non-scheduled in Section 2 I.

Gross Weight Pay:

Section 6.

First pilots and reserve pilots, when serving as first pilots, shall be paid, in addition to other rates of compensation stipulated in this Agreement, gross weight of airplane rates in accordance with the maximum certificated gross weight of the Company's aircraft as follows: two cents (2¢) for each 1,000 pounds of the maximum certificated gross weight of the aircraft for each hour flown, beginning with zero pounds and extending to the maximum certificated gross weight of the airplane.

Weight Pay Example:

Douglas DC-4 = 73,000 lbs. maximum certificated gross weight.

$$\frac{73{,}000}{1{,}000} \times 2¢ = \$1.46 \text{ per hour.}$$

For the purpose of computing maximum gross weight pay, the total weight figure to the nearest 1,000 lbs. should be used.

First Pilots Mileage Pay:

Section 7.

A first pilot and reserve pilot, when flying as first pilot, shall receive monthly mileage pay of one cent (1¢)

for each mile flown during each month up to 17,000 miles and two cents (2¢) for each mile flown between 17,000 miles and 22,000 miles and three cents (3¢) for each mile flown in excess of 22,000 miles.

Section 8.

A. The speed for mileage pay computation purposes shall be 155 MPH for Douglas DC-3 airplanes, 215 MPH for Douglas DC-4 airplanes, 235 MPH for Martin 404 airplanes, 260 MPH for Lockheed Constellation L-749 airplanes, 275 MPH for Lockheed Constellation L-1049 airplanes, 300 MPH for Lockheed Constellation L-1049C airplanes, 275 MPH for Douglas DC-6B airplanes and 325 MPH for Douglas DC-7 and DC-7B airplanes.

B. If a flight does not operate over the route or an alternate route of a scheduled flight, the mileage shall be established through the use of the time flown from block to block and the speed used for mileage pay purposes shall be 155 MPH for Douglas DC-3 airplanes, 215 MPH for Douglas DC-4 airplanes, 235 MPH for Martin 404 airplanes, 260 MPH for Lockheed Constellation L-749 airplanes, 275 MPH for Lockheed Constellation L-1049 airplanes, 300 MPH for Lockheed Constellation L-1049C airplanes, 275 MPH for Douglas DC-6B airplanes and 325 MPH for Douglas DC-7 and DC-7B airplanes.

C. When a change in a calendar date occurs enroute, the date on which the trip originated shall be considered the date on which the trip was made and to which date all time for the trip, for pay purposes, shall be credited.

First Pilot Serving As Copilot:

Section 9.

A. When a first pilot or reserve pilot serves as a copilot for the purpose of qualifying or retaining his qualifications on a route at his own request, he shall receive his regular base pay only. When the Company assigns a pilot to qualify or to retain his qualifications on a route at its request he shall in addition to his regular base pay, receive flying pay based upon day flying rates for the equipment being from on such route qualifying flights regardless of whether or not he is manipulating the controls as a first pilot or copilot, provided that this will not apply to a reserve pilot on reserve pilot minimum pay status. When a pilot is qualifying on a bulletined run where stipulation is made in the request for bids that qualifying pay will be paid over all or a part of the route involved, pay will be made for such qualifying on the basis of Company request.

B. When a qualified and designated first pilot, other than a reserve pilot, is assigned at the request of the Company to serve as a copilot member of a flight crew, he shall receive in addition to base pay, flying pay at first rates.

Note: Section 9, Paragraph B, will apply only in situations where a regular first pilot is called upon to serve as a copilot due to a copilot not being available for a particular trip.

Minimum Monthly Pay—All Pilots:

Section 10.

A. 1. Reserve Pilots.

(a) A reserve pilot shall be so designated by the Company and may be used as a first pilot or copilot.

(b) A reserve pilot shall, in addition to his base pay, be paid copilot flying pay on the days he flies as copilot, and first pilot flying pay on the days he flies as first pilot.

(c) Each reserve pilot shall be paid a minimum monthly guarantee consisting of base pay, plus sixty (60) hours of flying pay at first pilot rates, one-half day and one-half night, on the equipment flown. When a reserve pilot flies more than one type of equipment in any month as a first pilot, his guarantee shall be pro-rated according to the flying pay hours he flies as a first pilot, on each type of equipment that month. This guarantee shall apply to any reserve pilot during any calendar month he is so designated by the Company.

Example of Minimum Pro-Rata Guarantee for Reserve Pilot

Hours flown as copilot on L-749 = 30 hours
(Do not count for proration of minimum guarantee.)
First pilot hours flown on DC-4 aircraft ..... = 40 hours
First pilot hours flown on Martin 404 aircraft = 10 hours

Total first pilot hours flown during month .. = 50 hours
40 ÷ 50 = 80% (proportion of DC-4 time)
10 ÷ 50 = 20% (proportion of Martin 404 time)

60 hours of flying pay, half day, half night on DC-4		$ 644.10
60 hours of flying pay, half day, half night on Martin 404 (44,900 lbs.)		$ 637.50
$644.10 x 80%	$ 515.28	
$637.50 x 20%	$ 127.50	
Plus Base Pay (Fifth year man) ...	$ 290.00	
Total Monthly Guarantee ..	$ 932.78	
Actual flying pay for 30 hours flown as L-749 copilot (half day, half night)		$ 174.35
Actual flying pay for 40 hours flown as DC-4 first pilot (half day, half night)		429.40
Actual flying pay for 10 hours flown as M-404 first pilot (half day, half night)		123.75
Total actual flying pay		$ 727.50
Plus base pay (Fifth year man)		290.00
Total actual pay		$1,017.50
Amount to be paid to reserve pilot in above example		$1,017.50

2. First Pilots.

In addition to their base pay, first pilots shall receive a minimum monthly guarantee equal to sixty (60) hours of flying pay, half day and half night, on the equipment which they are currently flying as first pilot. When a first pilot flies more than one type of equipment in any calendar month, as first pilot, his guarantee shall be prorated according to the flying pay hours he flies as first pilot on each type of equipment that month. In the event such pilot does no flying as a first pilot during a calendar

month, the guarantee to which he is entitled, if any, shall be based on the last calendar month in which he did fly as a first pilot.

Example of Minimum Pro Rata Guarantee for First Pilot

Hours flown on Martin 404 aircraft	=	40 hours
Hours flown on Constellation L-749 aircraft ..	=	10 hours
Total hours flown during month	=	50 hours

40 ÷ 50 80% (proportion of Martin 404 time)
10 ÷ 50 20% (proportion of Constellation L-749 time)

60 hours of flying pay, half day, half night on Martin 404 (44,900 lbs.)		$ 637.50
60 hours of flying pay, half day, half night on Constellation L-749 (107,000 lbs.)		741.90
$637.50 x 80%	$ 510.00	
$741.90 x 20%	148.38	
Plus Base Pay (Eight year first pilot)	350.00	
Total monthly guarantee ..	$ 1,008.38	

3. Copilots.

In addition to base pay, copilots who have completed two years of service with the Company as a pilot shall receive a minimum monthly guarantee equal to sixty (60) hours of flying pay, half day, half night, on the equipment which they are currently flying as copilot. When a co-pilot flies more than one type of equipment in any given month, his guarantee shall be prorated according to the flying pay hours he flies on each type of equipment that month. In the event such copilot does no flying during a calendar month, the guarantee to which he is entitled,

if any, shall be based on the last calendar month in which he did fly as copilot.

Example of Minimum Pro Rata Guarantee for Fifth Year Copilot

Hours flown on Martin 404 aircraft	= 40 hours	
Hours flown on Constellation L-749 aircraft ..	= 10 hours	
Total hours flown during month	= 50 hours	
40 ÷ 50 = 80% (proportion of Martin 404 time)		
10 ÷ 50 = 20% (proportion of Constellation L-749 time)		
60 hours of flying pay, half day, half night on Martin 404 (44,900 lbs.) at 47% of first pilot rates		$ 299.63
60 hours of flying pay, half day, half night on Constellation L-749 (107,000 lbs.)		348.69
$299.63 x 80%	$ 239.70	
$348.69 x 20%	69.74	
Plus Base Pay (Fifth year copilot) ..		$ 290.00
Total monthly guarantee ..		$ 599.44

B. At all major bases, the Company shall endeavor to base a number of senior copilots who are checked out and qualified to act as first pilots.

C. The provisions of this Section will not apply to copilots during their first two years of service.

D. Reasonable effort shall be made to schedule regularly assigned pilots on regular schedules in a manner which will as nearly as possible use up all their allowable monthly hours.

E. When a pilot is off pay status or is not available for normal flight duty, his monthly guarantee shall be pro-rated accordingly.

Pay Copilots:

Section 11.

In addition to base pay, each copilot who has completed two years of service with the Company, as a pilot, shall, for each hour flown as a copilot, be paid an amount computed in accordance with the following table:

Years of Service as Pilot	Percentage of First Pilots Hourly, Gross Weight, and Mileage Pay on Equipment Flown to be Paid for Each Copilot Hour
Third year	45%
Fourth year	46%
Fifth year	47%
Sixth year	48%
Seventh year	49%
Eighth year and thereafter	50%

Example of Total Monthly Earnings of Fifth Year Copilot (Domestic)

Copilot flies 80 hours, 50% day, 50% night, in L-1049	
Hourly pay (first pilot)	$ 630.00
Mileage pay (first pilot)	270.00
Gross weight pay (first pilot)	192.00
Total flying pay (first pilot)	$1,092.00
Copilot flying pay $1,092.00 multiplied by 47%	$ 513.24

Plus Base Pay (Fifth year as pilot)	290.00
Total copilot monthly earnings	$ 803.24

Deadheading:

Section 12.

A. When a pilot with more than two (2) years of service deadheads under orders from the Company on a flight or part thereof to or from protecting any flight such pilot shall be credited with such deadhead time for both flight pay and flight time limitation purposes at the rate of one-half (1/2) hour for each hour of such deadhead time based on the equipment used on the flight protected.

B. When a pilot with less than two (2) years of service deadheads under orders from the Company on a flight or part thereof to or from protecting any flight, such pilot shall be credited with such deadhead time for flight time limitation purposes only at the rate of one-half (1/2) hour flight time credit for each hour of such deadhead time.

C. The deadhead time shall be figured on the actual flying time on the deadhead flight, provided, however, that in no case will the deadhead time allowed exceed the actual time of the flight protected.

D. Pilots, when deadheading under orders from the Company, shall be paid expenses in accordance with the provisions of Section 14 of this agreement.

Miscellaneous Flying:

Section 13.

A. A regularly assigned first pilot, reserve pilot, or copilot who flies part time as first pilot, in regular schedrule, shall be assigned to all regular scheduled flights. Such scheduling assignments shall be made and posted at least 24 hours prior to take-off time except that when such advance posting is impossible due to schedule being disrupted because of unforeseen difficulties, the Company shall notify the pilots affected, as far in advance of their take-off time as the circumstances, then existing, will permit.

B. When a pilot is scheduled in accordance with Paragraph A of this Section by the Company, and is available, such pilot shall make the trip, unless otherwise ordered by the Division Chief Pilot.

C. When a pilot is called to the airport for the purpose of acting as first pilot or copilot on a flight or flights of a special nature, and the flying on such flight or flights amounts to a total flying time of less than one (1) hour, and after the completion of such flying the pilot is released from duty, he shall receive not less than one (1) hour's flying pay at regular first pilot or copilot rates for the equipment so flown. The above shall not apply to pilots completing interrupted flights, check flights, training flights or practice flights.

Traveling Expense:

Section 14.

A. A pilot's expense allowance while engaged in operations away from his domicile base station shall be forty cents (40c) per hour for each hour, or fraction thereof, while away from his base station; and when a pilot is assigned by the Company to a temporary base station, he shall, in addition, while engaged in operations away from such temporary base station, be allowed forty cents (40c) per hour for each hour, or fraction thereof, while away from such temporary station, provided that no expenses shall be allowed a pilot under this Section when the period of time spent away from either his domicile base station or his temporary station is less than three (3) hours. No expense shall be allowed under this Section on a flight where a pilot leaves his domicile base station or temporary station and returns to such station without a landing being made at a point other than such base station or temporary station.

B. A pilot's expense allowance while assigned to the Company's training school or any temporary duty or assignment away from his base station shall be forty cents (40c) per hour for each hour or fraction thereof away from such station.

C. In addition to the provisions of Paragraph A of this Section, additional expenses may be allowed covering any extraordinary condition.

Moving Expenses.

Section 15.

A. Pilots, when transferring from one station to another at Company request, will be allowed actual moving expenses for household effects not to exceed a maximum of 7,500 pounds or 1,100 cubic feet, if substantiated by properly receipted bills for shipping, insurance, packing, storage not to exceed fourteen (14) days, unpacking and drayage. Expenses for car moving shall be allowed each pilot at the following rates: Six cents (6c) per mile for the shortest highway mileage between stations from which and to which he is being transferred; plus an en route expense allowance not to exceed three cents (3c) for each mile traveled based on the shortest highway distance between the two points.

B. Pilots transferring from one station to another at their own request or successful base bidders (except as otherwise provided in this agreement) will bear their own moving expenses; however space-available transportation shall be furnished to such pilots and their immediate families to the extent permitted by law.

C. Successful bidders on pilot assignments to newly established or re-established pilot bases will be considered as transferred at Company request and Paragraph A of this Section will apply.

D. When a pilot is transferred at the Company's request, he shall, for the first seven (7) days after arriving at his new pilot base, be allowed reasonable expenses for meals and lodging for himself and his immediate family,

provided all expenses claimed for lodging are substantiated by receipts.

E. In the event a presently established pilot base is terminated or closed, all pilots at such base shall be allowed moving expenses in accordance with Paragraphs A and D of this Section to any base to which they may move under Section 28 of this Agreement.

Vacations:

Section 16.

A. Pilots shall receive vacations in accordance with the following time and monetary stipulations:

1. A newly employed pilot who has been in the service of the Company for a period of less than twelve (12) months as of January 1st of any year shall receive one (1) day's vacation for each month of service with the Company prior to January 1st. This vacation may be taken at any time within the calendar year.

2. After the provisions of point 1 of this paragraph have been complied with, pilots who have been in the service of the Company twelve (12) months as of January 1st of any year shall receive a vacation annually in accordance with the following table:

1st through 9th year	14 days
10th year	16 days
11th year	17 days
12th year	19 days
13th year	20 days
14th year and thereafter	21 days

A pilot on leave or leaves of absence and/or off the payroll in excess of thirty (30) days, shall have his vacation reduced by one-twelfth (1/12) for each thirty (30) days or part thereof that he is on such leave and/or off the payroll in excess of thirty (30) days. Example:

On leave and/or off the payroll	Total Vacation days earned reduced by:
0 through 30 days	0
31 through 60 days	1/12
61 through 90 days	2/12
91 through 120 days	3/12
121 through 150 days	4/12
151 through 180 days	5/12
181 through 210 days	6/12
211 through 240 days	7/12
241 through 270 days	8/12
271 through 300 days	9/12
301 through 330 days	10/12
331 through 360 days	11/12
361 through 366 days	12/12

3. A pilot who earns vacation during any calendar year while on flat pay status for all or any part of such year shall, for each day of vacation, be paid vacation pay computed by dividing the amount of his total earnings during such previous calendar year by the number of days he was on pay status, provided, that if a pilot at the time of taking vacation is on flat pay status, he shall receive his current pay.

4. A pilot who earns vacation during any calendar year in which he was at no time on flat pay status shall be paid, for each day he is on vacation, his current base

pay plus his "daily vacation rate" computed by dividing the amount paid as earnings in the previous calendar year, exclusive of base pay, by the number of days he was on pay status.

5. For each day a pilot is on vacation he will be credited with two hours and forty minutes (2:40) flight time against his total allowable monthly flight time.

6. A pilot shall, at his option, have a minimum of forty-eight (48) consecutive hours free from all duty with the Company before he begins his regular annual vacation period.

7. It is understood and agreed that this section will apply only to vacations earned during the calendar year 1953 and thereafter and taken subsequent to January 1, 1954.

B. Preference in the periods in which pilots shall be permitted to take their vacations shall be granted in the order of seniority at the station at which they are based, taking into consideration the requirements of the service.

C. A pilot shall be notified in writing as far in advance as is practicable, but in no case less than thirty (30) days in advance of the beginning of his vacation period. Vacation assignments once established may be varied by mutual agreement between the pilot and the Company or in cases of emergencies stated in writing by the Vice President in charge of operations.

D. Vacations shall not be cumulative and must be taken within the calendar year. However, in the event

Company operations in any year do not permit any pilot his regular vacation during such year, he shall be so notified in writing by the Company and he shall be permitted to take such vacation in the succeeding year. When a pilot is not granted a vacation due to the operation of this Section for a previous year of service, such pilot shall have his option of accrued vacation the following year or vacation pay for vacation earned and not received.

E. Upon written request, any pilot shall be granted two weeks' military leave per year without pay providing Company operations permit.

F. When a pilot's employment with the Company terminates during any year, he shall be paid for vacation time earned prior to January 1 of that year and not previously taken, and the total amount of such vacation compensation shall be at the rate of pay currently receivable by such pilot, and such amount shall be in addition to any other compensation due him as of the date of termination of employment, provided that this paragraph shall not apply to pilots who have not completed their probationary period as defined in Section 21 of this Agreement.

Hours of Service:

Section 17.

A. Eighty-five (85) hours of flying shall constitute the monthly maximum for pilots.

B. For the purposes of this Section a pilot's on-duty period shall begin one hour prior to the actual departure time of the first flight of his scheduled flight assignment or at his required reporting time, whichever is later, and shall end upon the termination ("in time") of such flight or flights scheduled for said on-duty period; provided that such on-duty period shall continue until broken by a minimum rest period of eight (8) hours where suitable sleeping accomodations are provided at or near by the airport, or ten (10) hours at stations where such accommodations are not so available, or ten (10) hours at the pilot's base station.

C. A pilot who is scheduled to be and actually is on scheduled duty in accordance with the currently effective base bid sheets for more than four (4) hours but not more than eight (8) hours in any one on-duty period shall be credited with a minimum of three (3) hours of flying for the trip or trips which he is scheduled to fly and flies; and when the flying pay time is less than three (3) hours the difference between the flying pay time and the three (3) hours shall be computed as an extension of the final portion of the last trip flown during such on-duty period, and said difference shall be credited as follows: (1) For flight time limitation purposes, and (2) for flying pay purposes to the extent of such difference during any month in which the pilot's flying time for pay purposes does not exceed seventy-six (76) hours, and credited only in an amount necessary to bring his flying time for pay purposes up to seventy-six (76) hours, and any credit so used shall be in the order of accrual during the month (i.e., first accrued first used).

D. A pilot who is scheduled to be and actually is on scheduled duty in accordance with the currently effective

base bid sheets for more than eight (8) hours but not more than twelve (12) hours in any one on-duty period shall be credited with a minimum of four (4) flight hours for the trip or trips which he is scheduled to fly and flies; and when the flying pay time is less than four (4) hours the difference between the flying pay time and the four (4) hours shall be computed as an extension of the final portion of the last trip flown during such on-duty period, and said difference shall be credited in the same manner as is provided in paragraph C above.

E. A pilot who is scheduled to be and actually is on scheduled duty in accordance with the currently effective base bid sheets for more than twelve (12) hours in any one on-duty period shall be credited with a minimum of five (5) flight hours for the trip or trips which he is scheduled to fly and flies; and when the flying pay time is less than five (5) hours the difference between the flying pay time and the five (5) hours shall be computed as an extension of the final portion of the last trip flown during such on-duty period, and said difference shall be credited in the same manner as is provided in paragraph C above.

F. A pilot will not be eligible for flying pay credit under the provisions of paragraphs C, D, and E of this Section during any month in which his flying time for pay purposes exceeds seventy-six (76) hours.

G. When a pilot is not available for duty during any part of the month, the seventy-six (76) hour limit specified above shall be prorated accordingly.

H. This Agreement contemplates that pilots shall devote their entire professional flying service to the Com-

pany, except that nothing in this Agreement shall be construed to prevent any pilot from affiliating with the National Guard or the reserve Military and Naval services of the United States.

Seniority General:

Section 18.

A. Seniority as a pilot shall be based upon the length of service as a pilot with the Company or with other companies whose operations are taken over by the Company.

B. Seniority shall begin to accrue from the date a pilot is first placed on the payroll on regular pilot status, at which time he will be given a concurrent seniority number and from which date seniority shall continue to accrue during his period of service.

C. Seniority shall govern all pilots in case of promotion and demotion, their retention in case of reduction in force, their assignment or reassignment due to expansion or reduction in schedules, their re-employment after release due to reduction in force, and their choice of vacancies, provided that the pilot's qualifications are sufficient for the operation to which he is to be assigned. In the event that a pilot is considered by the Company not to be sufficiently qualified, the Company shall immediately furnish such pilot written reasons therefor. This Section shall apply except as otherwise stipulated in this Agreement.

Pilot's System Seniority List:

Section 19.

No longer applicable.

Protest On Seniority List:

Section 20.

Within ten days after January 1 and July 1 of each year, the Company shall bring up to date and post a revised Pilots' System Seniority List which shall contain in their proper order, names of all pilots then entitled to seniority. Pilots shall have thirty (30) days after the posting of such lists in which to protest to the Company any omission or incorrect posting affecting their seniority in any such revised list, but, such protest shall be strictly confined to errors or changes occurring subsequent to the posting of the prior System Seniority List.

Period of Probation:

Section 21.

A copilot shall be on probation for an aggregate of the first twelve months of his service on flying status as a copilot with the Company.

Leaves of Absence:

Section 22.

A. When the requirements of the service will permit, a pilot may be granted a leave of absence for a period

not in excess of ninety (90) days, provided that a further leave up to a total of three hundred and sixty (360) days may be granted by the Company to a pilot serving in an official capacity with the Association. When such leaves are granted, the pilot shall retain and shall continue to accrue seniority during such period, provided that during such period the pilot maintains his air line pilot's certificate or certificates required for his status. Such leave or leaves may be extended for additional periods of not to exceed ninety (90) days for each such leave when approved in writing by the Company, but during such extended leaves other than the first leave of the maximum of ninety (90) days, except as provided in this paragraph, seniority shall not continue to accrue. If, during the first leave of not to exceed ninety (90) days, the pilot shall permit his air line pilot's certificate or certificates required for his status to lapse, his seniority shall accrue only to the date of such lapse provided that any pilots on leave at the time this Agreement becomes effective shall continue on such leave in accordance with their previous Agreement with the Company.

B. When leaves are granted on account of sickness or injury, a pilot shall retain and continue to accrue his seniority whether or not he is able to maintain his air line pilot's certificate or certificates required for his status, until he is able to return to duty or is found to be unfit for such duty, except that in no case shall leave for sickness or injury exceed a total continuous period of three (3) years. Return to duty after such leave shall be subject to a reasonable qualifying period not to exceed six (6) months.

C. Any dispute arising hereunder concerning the physical fitness of the pilot concerned shall be settled in accordance with Section 31.

D. A pilot returning from leave occasioned by sickness or injury shall be permitted to exercise his seniority at the base to which he had previously been assigned, subject to Paragraph B of this Section.

E. A pilot on leave shall not, without prior written permission of the Company, engage in aviation employment and shall not engage in business activties adverse to the Company's interest.

F. Any pilot who is involuntarily ordered to active military service, or volunteers for such service, in the event war is declared by the United States of America, or is involuntarily ordered to active military duty in a partial or total emergency shall, during such periods of service, be automatically granted a furlough by the Company until a maximum of ninety (90) days after it is possible for such pilot to secure a release or discharge from such active service; and the pilot shall, during such period, retain and continue to accrue his seniority. Pilots who have completed their probationary period in accordance with Section 20 of this Agreement shall, in addition to retaining their position on the seniority list, accrue seniority for pay purposes. Return to duty after such military furlough shall be subject to a reasonable qualifying period, the maximum of which shall be in accordance with the following stipulations:

1. Three (3) months if he has been on flying status in the military service.

2. Six (6) months if he has been on non-flying status in the military service.

Nothing herein shall apply when a pilot voluntarily goes on active duty for normal training periods each year, in which case the pilot shall, if the requirements of the service permit, be entitled to a leave of absence during such priods and shall continue to retain and accrue his seniority.

Transfer to Non-Flying or Supervisory Duty:

Section 23.

A. A pilot transferred to non-flying or supervisory duty shall retain and continue to accrue seniority provided that such pilot maintains at all times a valid air line pilot competency certificate or certificates. If such pilot shall permit his specified certificate or certificates to lapse, he shall retain the seniority already accrued to the time of such lapse and shall have a period of not to exceed one year in which to regain such specified certificate or certificates. If he does so regain such specified certificate or certificates within one year, his seniority shall recommence to accrue from the date his certificate or certificates are so regained.

B. When a pilot is transferred to non-flying or supervisory duty on account of sickness or injury, or becomes sick or injured while on such non-flying or supervisory duty, he shall retain his seniority during such period of sickness or injury whether or not he is able to maintain his air line pilot certificate or certificates required for his status, until he is able to return to flying duty or is found to be unfit for such duty for a continuous period of three (3) years.

C. If a pilot engaged in non-flying or supervisory duty returns to line pilot flying, he shall be permitted to exercise his seniority at his present pilot base.

Example:

1. Present pilot base ..... New York

2. Present position, Chief Pilot .....New York

3. Returns to line flying duty at New York Pilot Base.

D. Any disputes arising hereunder concerning the physical fitness of such pilot shall be settled in accordance with Section 31.

E. All regular air line flying by check pilots shall be in accordance with Section 18 of this Agreement.

Loss of Seniority:

Section 24.

Any pilot whose services with the Company are permanently severed shall forfeit his seniority rights.

Seniority Promotions:

Section 25.

A. The Company may give copilots opportunity to qualify as first pilot at any time, providing that all such opportunities are given sufficiently in advance so as not to interfere with their promotion of first pilot, or pilots acting in the status of first pilots, in the order of their seniority, subject to Section 18, provided that any copilot

who has been in the active service of the Company for an aggregate of seventy-two (72) months as a copilot, and who has not as yet obtained an Airline Transport Rating will be given an opportunity to obtain such rating within the following twelve (12) month period. It is expressly agreed and understood that pilots who have an aggregate of seventy-two (72) or more months of service as a co-pilot as of November 1, 1954, and who have not as yet obtained an Airline Transport Rating, will be given an opportunity to obtain such rating within the following twelve (12) month period.

B. When a copilot fails to qualify for promotion as a first pilot or reserve pilot in his proper turn in accordance with System Seniority, his case shall be handled as the circumstances indicate, subject to Section 30.

C. Pilots furloughed due to reduction in force, on return to duty shall be allowed, for seniority purposes, all time accrued as a pilot with the Company prior to such furlough, but shall not continue to accrue seniority during the period of furlough. All such furloughs shall expire at the end of three (3) years from the effective date of such furlough. Re-employment shall be subject to the furloughed pilots passing a satisfactory physical examination at the time of re-employment, and after re-employment the pilot shall be required to serve any unexpired portion of his probationary period.

D. All pilots furloughed from the Company shall file proper addresses with the Company at time of furlough. Any changes in address must be supplied to the Company immediately. Any furloughed pilot failing to return to duty within fourteen days of notice will be considered out of the service unless a justifiable reason be prsented therefor.

Seniority Date:

Section 26.

A. Any pilot once having established as seniority date hereunder shall not lose that date except as provided in this Agreement.

B. When a junior copilot is promoted over a senior copilot, by reason of the failure of the latter to qualify in his turn, the senior copilot shall continue to retain his position on the Pilots' System Seniority List.

School Pay Guarantee:

Section 27.

A. Pilots attending ground school or flight school at Company request for the purpose of qualifying on new types of Company aircraft shall, except as provided in Paragraph B. of this Section, be paid school pay, which shall consist of their current base pay plus their average daily earnings (exclusive of base pay) during the three (3) calendar months immediately preceding such assignment, exclusive of unpaid sick leaves and unpaid leaves of absence.

Example:

(1) A pilots' total earnings, exclusive of base pay during January, February, March=$1,872.00.

(2) Days off without pay=2 days. $1,872.00 divided by 88 days=$21.27.

(3) Total number of days transition during April equals 14 days.

(4) $21.27 x 14 days=$297.78 total pay for transition.

B. Pilots with less than sixty (60) days' flying pay earnings during the three calendar months immediately preceding such school assignment as a result of leave of absence or being on a flat salary basis will be paid flying pay, equal to one-thirtieth (1/30) of their current minimum monthly guarantee in addition to base pay for each day such pilots attend school.

C. A pilot who has been checked out and qualified as first pilot on a type of equipment, and who subsequently has not flown such type of equipment, either as first pilot or copilot for an extended period of time, may be reassigned by the Company as copilot on such equipment for a period of time for familiarization purposes prior to his moving to first pilot on such equipment. In such case said pilot while so assigned shall be paid in accordance with Paragraphs A and B of this Section.

Filling of Vacancies:

Section 28.

A. Objective.

The objective of the Filling of Vacancies Section is to provide an orderly method of applying the principles of seniority as defined in Section 18 of the intra and inter base filling of vacancies in such a manner that the "Pilots' System Seniority List" will govern. It shall attain as nearly as possible the same effect as if all pilots were

domiciled at one base in respect to promotion, demotion, retention in case of reduction in force, assignment or reassignment due to expansion or reduction in the amount of work.

B. Annual Statement of Anticipated Operating Requirements.

Concurrent with the activation of this Section 28 and thereafter annually on or before the 1st of May, the Company will publish and make available to each pilot a statement of the Company's anticipated operating requirements projected for the next twelve (12) months' operation. Such statement shall include at least the following items:

1. Base and system crew requirements.

2. Pilot divisions operating from each base.

3. Apportionment of different types of equipment to bases and to divisions within the bases.

C. Determination of Base and System Pilot Requirements.

1. The Company shall compile, record and publish a monthly summary of the first pilot requirements not later than the 15th of the following month, for each base and for the system as a whole. Such summary will clearly indicate the seniority number of the last pilot who would be regularly employed as first pilot if all pilots were domiciled at one base, adjustment being made to exclude regularly assigned supervisory personnel. That seniority number shall be known as the system first pilot

requirement number. The seniority number immediately below the system first pilot requirement number will designate the system senior copilot number.

(a) Base first pilot requirement is the total number of first pilots required to meet the needs of scheduling practices as indicated by the currently effective base bid sheets plus any additions resulting from the application of 28-J—3.

2. The Company shall compile, record and publish a monthly summary of the copilot requirements, not later than the 15th of the following month for each base and for the system as a whole. Such summary will clearly indicate the seniority number of the last copilot who would be regularly employed as copilot if all pilots were domiciled at one base. That seniority number shall be known as the system copilot requirement number.

(a) Base copilot requirement is the total number of copilots required to meet the needs of scheduling practices as indicated by the currently effective base bid sheets plus the number of copilots needed to fill reserve first pilot flying asignments.

3. The pilot requirement existing at each base as computed in compliance with 28-C-1 (a), 2(a) shall be considered a beginning period from which future expansion or curtailment shall be recorded in the following manner:

(a) When the monthly summary of pilot requirements shows a change from the beginning period at any base, the Company shall indicate on the monthly summary required by 28-C-1-2, whether that change is temporary or permanent.

(1) A permanent vacancy or curtailment is a first pilot or copilot vacancy or curtailment which is anticipated to be six (6) months or more duration.

(2) A temporary vacancy or curtailment is a first pilot or copilot vancancy or curtailment which is anticipated to be less than six (6) monhts duration.

(3) Changes which have lasted six (6) months but which have not been declared permanent shall be deemed permanent for the purposes of this section unless the Company and the Master Executive Council mutually agree otherwise in the light of conditions then prevailing.

(4) The effects of permanent expansion or curtailment shall be adjusted system-wide in accordance with Section 18 and in the manner required by 28-C-D-E-F.

D. Bulletining of Permanent Base Vacancies.

1. Prior to the permanent transfer or asignment of any pilot to a base the primary vacancy or vancancies to be filled shall be bullentined at all stations where pilots are domiciled as far in advance as is practicable, but in no case later than the 10th of the month following the creation of the vacancy. Such bulletin shall include at least the following:

(a) Number of first pilot and copilot primary vacancies respectively.

(b) Base or bases at which the primary vacancy or vacancies exist.

(c) Reason for existence of such vacancy or vancancies.

(d) Pilot divisions operating from the base or bases.

(e) Current apportionment of different types of equipment being operated over such pilot divisions.

(f) The currently adjusted system first pilot and co-pilot requirement numbers.

(g) Provision for bidding on possible resultant vacancies created by the filling of primary vacancies.

(h) A reasonable deadline date after which bids will not be accepted, which date shall not be less than ten (10) days after the bulletining of such vacancy or vacancies.

E. Procedure For Filling Permanent Base Vacancies.

1. The senior pilot or pilots bidding shall be assigned to the base where such primary vacancy or vacancies exist and all resultant vacancies created by this bidding shall be filled accordingly systemwide.

(a) After being assigned to such base, pilots choice of equipment, pilot divisions, and schedules flown on such division shall be in accordance with Section 18 and stated preference.

(b) Notwithstanding the provisions of this section, the Company may reject the base preference of any pilot who has not completed twelve (12) months of service with the Company.

2. If no eligible pilot bids on an existing vacancy or vacancies, the Company may reassign a pilot or pilots from another base, for the convenience of the Company, to the base where the vacancy or vacancies exist; provided, however, that:

(a) Any pilot who holds a permanent base bid at his present domicile may not be moved under Section 28-E-2.

(b) Any pilot who is scheduled to be reassigned and who is within the system requirement number but does not hold a permanent base bid at his present domicile and is not needed at his present domicile, shall have the option of being reassigned in accordance with Section 28-F-3 (a) and (b).

(c) Any other pilot who is scheduled to be so reassigned shall have the option of displacing the system junior pilot at a base other than the base where the vacancy or vacancies exist; and provided further that:

(d) Any pilot who elects to exercise either of the options specified in (b) or (c) above will be considered as being transferred at his own request and not for the convenience of the Company, and the displaced pilot who moves to the base where the vacancies exist will be transferred for the convenience of the Company.

F. Curtailment or Closing of a Base.

1. At least thirty (30) days prior to any permanent reduction in the number of pilots required at a base all pilots at such base shall be notified in writing of date of such permanent reduction is contemplated.

2. At least sixty (60) days prior to the closing of a base all pilots shall be notified in writing of date such closing is contemplated.

3. In the event of base curtailment or closing, the right to move from the base will be in accordance with Section 18 and stated preference.

(a) First pilots moving from a curtailed or closed base may move to any base where flying used in computing the system first pilot requirement number will be flown by a pilot whose seniority number is below the system first pilot requirement number, or where a previously unfilled first pilot vacancy exists.

(b) Copilots moving from a curtailed or closed base may move to any base where flying used in computing the system copilot requirement number will be flown by a copilot whose seniority number is below the system copilot requirement number or where a previously unfilled copilot vacancy exists.

G. Filling of Temporary Vacancies.

1. Temporary vacancies at all bases, such as vacations, relief flying, and all comparable flying of temporary duration on all equipment, and on all divisions operated out of such bases, shall be filled in in the following order:

(a) In accordance with system seniority, and stated preference, from the ranks of the qualified pilots within the particular base.

(b) By temporary assignment from another base. Such pilot's choice of assignments at such temporary base shall

be in accordance with his qualifications, system seniority and stated preference. When the need for such temporary assignment ceases to exist ,the temporarily assigned pilot shall have no further rights at such base.

H. Mutual Transfers of Base.

1. Pilots with system seniority numbers above the system first pilot requirement number may be permitted to make mutual transfers of base at their own expense, subject to Company approval, provided such pilots' seniority is sufficient to hold a permanent base bid at the base to which transferred.

2. Pilots with seniority numbers below the system first pilot requirement number and above the system copilot requirement number may be permitted to make mutual transfers of base at their own expense, subject to Company approval, provided such copilots' seniority is sufficent to hold a permanent copilot base bid at the base to which transferred.

3. Pilots with seniority numbers below the system copilot requirement number may be permitted to make mutual transfers of base at their own expense, subject to Company approval.

I. Assignment of Flying at a Base.

1. All flying assignments will be made in accordance with Section 18 and the stated preference of the bidding pilots assigned to the base.

(a) In the event there is a vacancy for which no one has stated a preference the Company may temporarily

assign the junior qualified pilot at the base to fill the vacancy.

(1) The period of such temporarily assignment will not exceed ninety (90) days, subject, however, to 28-Q.

2. All preferences within a base shall be rebid when:

(a) There is a reapportionment of type of equipment on any division operating from such base.

(b) A trip combination is changed so that the night time increases or decreases fifteen percent (15%) or more of the total time of such combination.

(c) The hour of departure at either terminal is changed two (2) hours or more.

(d) A schedule is added or removed which varies the number of flying assignments.

(e) A filling of permanent base vacancies takes place.

(f) Improvement in trip combinations can be made.

3. If a pilot's seniority entitles him to assignment on equipment on which he is not qualified, and for which he has expressed preference, and on which he is the successful bidder in intra base bidding, the Company will exert its best effort to provide him an opportunity to qualify within sixty (60) days from the date of his request, subject, however to 28-Q.

J. Reserve Flying.

1. When the Company determines that reserve flying assignments are necessary at a base, such reserve flying assignments will be proffered only to pilots domiciled at that base and will be assigned in accordance with Section 18 and sated preference of the pilots at that base.

2. The number of reserve pilots at any base shall be sufficient to cover the necessary reserve flying, however, the maximum number of reserve pilots at any base shall not exceed one reserve pilot for each ten (10) first pilots at that base.

3. When the maximum number of necessary reserve pilots at a base exceeds the limits of 28-J-2, the Company and Master Executive Council will consider the advisability of including such excess in the determination of permanent base pilot requirements.

K. Opening New Base.

1. Should a new pilot base be created, the Company will notify all pilots in accordance with 28-D-1 (a), (b), (c), (d), (e), (f), (g), (h).

L. Activating Section 28.
(Activation completed.)

M. Annual Transfers.

1. When the provisions of paragraph 28-L have been compiled with, all future moves will be made as provided in this agreement and further that on June 1 of each year, moving shall be permitted in accordance with sys-

tem seniority and stated preference under the following conditions:

(a) A pilot holding a first pilot requirement number may move to any base where first pilot flying, used in computing the system first pilot requirement number, is being regularly flown by a pilot whose seniority number is below the system first pilot requirement number, or where previously unfilled first pilot vacancy exists.

(b) A pilot holding a copilot requirement number may move to any base where copilot flying, used in computing the system copilot requirement number, is being regularly flown by a pilot whose seniority number is below the system copilot requirement number, or where a previously unfilled copilot vacancy exists.

2. Pilots desiring to transfer under the provisions of 28-M-1 (a), (b) shall so state to the Company in writing not later than June 1 of the year desiring transfer.

3. Not later than June 15 of each year, the Company shall announce the award of permanent base bids resulting from the operation of this paragraph as provided for in 28-E-1.

N. System and Base Scheduling.

1. The Company shall, through its Vice President of Operations, make every effort consistent with efficient operation to:

(a) Keep the level of employment as stable as possible at the various bases.

(b) Distribute temporary flying as equitably as possible among the various bases.

(c) Publish and maintain a uniform set of procedures to be followed systemwide in qualifying and training pilots.

(d) Establish a systemwide pilot scheduling policy and an orderly system of scheduling for each base. The base scheduling system, so established, shall be published and furnished to each pilot at the base.

(1) Make available to the Pilots' Scheduling Committee all pertinent information relating to the anticipated flying from that base.

O. Transfer of Pilots.

1. Transfer of pilots between bases when made for the convenience of the Company shall be paid for in accordance with Section 15. In addition, the following transfers shall be deemed for the convenience of the Company.

(a) Primary moves caused by a permanent curtailment at a base to afford opportunity to work as first pilot to those first pilots displaced who are senior to the current system senior copilot number.

(b) Primary moves caused by a permanent curtailment at a base to afford opportunity to work as copilot to those copilots displaced who are senior to the current system copilot requirement number.

P. All previous reference in past agreements to base bid holders are subject to the provisions of the system first pilot and copilot requirement number concept as outlined in this section of the Agreement.

Q. The Master Executive Council shall assist, advise and consult with the pilots and Company on matters relating to the application and interpretation of this section.

Investigation and Discipline:

Section 29.

A. Hearing.

1. A pilot shall not be disciplined or dismissed from the Company without notification in writing as to any such action, and such pilot shall not be disciplined or dismissed without an investigation and hearing provided that the pilot makes written request for an investigation and hearing within seven (7) days after receiving such notification.

2. Nothing in this Section shall be construed to prevent the Company from holding a pilot out of service prior to written notification of charges preferred against him, and such written notification stipulated in Paragraph A-1 of this section shall be furnished the pilot with expeditiousness not exceeding seven (7) days.

3. Such investigation and hearing shall be held by a junior operating official of the Company designated by the Company for that purpose and shall be held within seven (7) days after the Company receives the written

notification from the pilot for an investigation and hearing as stipulated in Paragraph A-1 of this Section.

4. Prior to such investigation and hearing, the Company shall furnish such pilot a copy of the precise charge or charges against him, and he shall not be required to give testimony or furnish evidence prior to the actual time of the investigation and hearing. He shall be given the necessary time in which to prepare and to secure the presence of witnesses and shall have the right to be represented by an employee of the Company of his choice or by his duly accredited representative or representatives.

5. Within seven (7) days after the close of such investigation and hearing, the Company shall announce its decision in writing and shall furnish the pilot, or his duly accredited representative, a copy therof.

B. Appeal.

1. When a copy of such decision has been received by the pilot, or his duly accredited representative, and such pilot is dissatisfied with the Company's decision, he shall have the right to appeal to the Vice President in Charge of Operations of the Company, provided such appeal request is filed by the pilot in writing with the Vice President in Charge of Operations within seven (7) days from the date of the pilot's receipt of the decision of the investigation and hearing conducted by the junior operating official. Such appeal hearing shall be held within seven (7) days after the receipt of the pilot's request thereof by a senior operating official of the Company designated by the Compaany for that purpose.

2. Within ten (10) days after the close of such appeal hearing, the Company shall announce its decision in writing and shall furnish the pilot, or his duly accredited representative a copy thereof.

C. General.

1. If any decision made by the Company under the provisions of this Section is not appealed by the pilot affected within the time limit prescribed herein for such appeals the decision of the Company shall become final and binding.

2. Nothing in this Agreement shall extend the right of investigation and hearing to a copilot during his probationary period as stipulated in Section 21.

3. If, as a result of any hearing or appeal therefrom as provided herein, a pilot is exonerated, he shall, if he has been held out of service, be reinstated without loss of seniority and shall be paid for such time lost in an amount which he would have ordinarily earned had he been continued in service during such period.

4. If, as a result of any hearing or appeal therefrom as provided herein, the pilot shall be exonerated, the personnel record shall be cleared of the charges.

5. When it is mutually agreed that a stenographic report is to be taken of the investigation and hearing in whole or in part the cost will be borne equally by both parties to the dispute provided a Company employee is not used as a recorder. In the event it is not mutually agreed that a stenographic report of the proceeding shall be taken, any written record available taken of such in-

vestigation and hearings made by either of the parties to the dispute shall be furnished to the other party to the dispute upon request, provided that the cost of such written record so requested, if made by other than a Company employee, shall be borne equally by both parties to the dispute.

6. After the appeal provisions hereinbefore provided have been complied with, further appeal by the pilot, if made, shall be to the "Eastern Air Lines Pilots' System Board of Adjustment" as provided for in the "Agreement between Eastern Air Lines, Incorporated, and the Air Line Pilots in the service of Eastern Air Lines, Incorporated, as represented by the Air Line Pilots' Association, International, covering the establishment and maintenance of a System Board of Adjustment", dated July 23, 1941, and such appeal shall be made within thirty (30) days from the date of receipt by the pilot or his duly accredited representative or representatives, of the decision of the Chief operating officer. All submissions to the System Board of Adjustment shall be made in conformity with Paragraph (h) of the Adjustment Board Agreement.

Grievances:

Section 30.

A. Any pilot or group of pilots hereunder who have a grievance concerning any action of the Company affecting them shall be entitled to have such grievance handled in accordance with the procedure established in Section 29 hereof for investigation and hearing cases of discipline and dismissal.

B. Subject to space being available, witnesses and representatives who are employees of the Company shall receive free transportation over the lines of the Company from the point of duty to the point of hearing and return.

Physical Examination:

Section 31.

A. The purpose and object of any Company physical examination for a pilot shall be to diagnose the true and actual physical condition of the pilot, and the pilot or his duly designated personal physician will be furnished with an exact duplicate copy of all medical examiner's reports affecting him.

B. Physical standards for Company physical examinations will be those standards set forth in the C.A.A. Regulations as being required to maintain a first class C.A.A. Medical Certificate for Air Line Pilots. Physical examination procedures shall be determined by the Company.

C. Any information obtained by, or a result of, a Company physical examination shall be strictly confidential between the Company, the Company's doctor, and the pilot, and shall not be divulged to any other person without the written permission of the pilot.

D. A pilot shall not be required to submit to any Company physical examination in excess of two in any twelve-month period without the pilot's consent, unless it is the Company's opinion that his health or physical condition is appreciably impaired, in which case the following procedure shall apply:

1. The Company shall notify the pilot in writting, specifying the nature and extent of its concern.

2. Any pilot hereunder who in the Company's opinion fails to pass a Company physical examination may within thirty (30) days, at his option, have a review of his case in the following manner.

(a) He may employ a qualified medical examiner of his own choosing and at his own expense for the purpose of conducting a physical examination for the same purpose as the physical examination made by the medical examiner employed by the Company.

(b) A copy of the findings of the medical examiner chosen by the employee shall be furnished to the Company, and in the event that such findings verify the findings of the medical examiner employed by the Company, no further medical review of the case shall be afforded.

(c) In the event that the findings of the medical examiner chosen by the employee shall disagree with the findings of the medical examiner employed by the Company, the Company will at the written request of the employee ask that the two medical examiners agree upon and appointed third qualified and disinterested medical examiner, preferably a specialist, for the purpose of making a further physical examination of the employee.

(d) The said disinterested medical examiner shall then make a further examination of the pilot in question and the case shall be settled on the basis of his findings.

(e) The expense of employing the disinterested medical examiner shall be borne one-half by the pilot and

one-half by the Company, Exact duplicate copies of such medical examiner's report shall be furnished to the Company and to the pilot.

E. When a pilot is removed from flying status by the Company as a result of his failure to pass the Company's medical examination and appeals such action under the provisions of this Section, he shall, if such action is proven to be unwarranted as provided in paragraph D. of this Section, be paid retroactively for all time lost in an amount which he would have ordinarily earned had he been continued on flight status during such period; providing further that in no case shall he be paid for a period in excess of ninety (90) days from the date of his removal from flight status.

Pay—"Foreign and Overseas Operation":

Section 32.

A. First pilots assigned to the Company's "Foreign and Overseas Operation" shall be paid in addition to other rates of compensation two dollars ($2.00) for each hour flown in such operation, whether day or night flying.

B. Copilots assigned to the Company's "Foreign and Overseas Operation" shall be paid in addition to other rates of compensation one dollar and five cents ($1.05) for each hour flown in such operation, whether day or night flying.

C. Pilots assigned to the Company's "Foreign and Overseas Operation" shall be paid a minimum amount of monthly compensation in accordance with their applicable rates of compensation stipulated in this Agree-

ment for seventy (70) hours of flying one-half day and one-half night.

D. Pilots flying in both "Foreign and Overseas" and domestic operation during any calendar month shall have their minimum guarantee prorated according to the number of pay hours in each operation.

Expenses Pilots and Copilots—"Foreign and Overseas Operation":

Section 33.

Pilots, while flying in "Foreign and overseas Operation", shall receive traveling expense allowances in accordance with Section 14 of this Agreement. However, when the expense allowances under that section are insufficient to cover the normal layover expenses at any specific foreign layover point then the Company shall provide a supplementary expense allowance for such layover in order to reimburse the pilot for the additional expense. The amount of the supplementary expense allowance shall be arrived at by mutual agreement, based upon the cost of suitable lodging, meals, and transportation, such allowance may be different for each of the foreign stations and adjustments may be made from time to time by mutual agreement based on changing conditions affecting such supplementary expense allowance.

Pay—"Off-Shore Operation":

Section 34.

A. First pilots assigned to the Company's "Off-Shore Operation" shall be paid in addition to other rates of compensation, one ($1.00) dollar for each hour credited in such operation, whether day or night flying.

B. Copilots assigned to the Company's "Off-Shore Operation" shall be paid, in addition to other rates of compensation, fifty-five (55c) cents for each hour credited in such operation, whether day or night flying.

C. Hours flown in the Company's "Off-Shore Operation" shall be computed and credited as follows:

The normal flight mileage from point of leaving the shore of the mainland to point of arrival over the shore of the mainland shall be divided by the pegged speed for mileage purposes of the aircraft flown plus twenty-five (25) miles per hour. The dividend so computed shall be credited to the pilot as hours flown in such operation.

Unless and until otherwise agreed by the parties hereto, the flights to be deemed "Off-Shore" flights and the hours to be credited for each one-way "Off-Shore" flight shall be as follows:

1. Flights flown on the direct course between the shoreline near West Palm Beach and the shoreline near Wilmington, N. C., (496 miles)=2.1 hours on DC-4 aircraft, 1.7 hours on L-749 aircraft, 1.7 hours on L-1049 and DC-6B aircraft, 1.5 hours on L-1049C aircraft and 1.4 hours on DC-7 and DC-7B aircraft.

2. Flights flown on the direct course between the shoreline near Tampa and the shoreline near New Orleans (439 miles) = 1.8 hours on DC-4 aircraft, 1.5 hours on L-749 aircraft, 1.5 hours on L-1049 and DC-6B aircraft, 1.4 hours on L-1049C aircraft and 1.3 hours on DC-7 and DC7B aircraft.

3. Flights flown on the direct course between the shoreline near Tampa and the shoreline near Galveston (748 miles) = 3.1 hours on DC-4 aircraft, 2.6 hours on L-749 aircraft, 2.5 hours on L-1049 and DC-6B aircraft 2.3 hours on L-1049C aircraft and 2.1 hours on DC-7 and DC-7B aircraft.

Workmen's Compensation Benefits:

Section 35.

For Workmen's Compensation purposes, the pilots assigned to the Company's "Foreign and Overseas Operation" or "Off-Shore Operation" shall be provided the benefits afforded by all the provisions of the Federal Longshoremen's and Harbor Worker's Act.

Missing Pilots:

Section 36.

When a pilot assigned to the Company's "Foreign and Overseas Operation" or "Off-Shore Operation" becomes missing, while engaged in these operations, and his whereabouts becomes unknown, he shall be allowed the minimum monthly guarantee stipulated in this Agreement for such operation for a period of twelve (12) months, after disappearance or until such date as death is estab-

lished, whichever occurs first. If, upon the expiration of such twelve-month period, any such pilot is still missing, and his whereabouts is still unknown, or if prior to that time death is established, the Company shall pay or cause to be paid the death benefit provided for in Section 35 of this Agreement.

Benefit Assignments:

Section 37.

A. The monthly compensation allowable under Sections 35 and 36 of this Agreement to a pilot who is missing shall be credited to such pilot on the books of the Company and shall be disbursed by the Company in accordance with written directions from him. The Company shall require all pilots to execute and deliver to the Company a written direction in the form hereinafter set forth:

"To Eastern Air Lines, Inc.:

"You are hereby directed that all payments and benefits provided for me as a pilot in the Company's 'Foreign and Overseas Operation' or 'Off-Shore Operation' in the present agreement between the Company and the Air Line Pilots in the service of the Company, as such Agreement may be amended from time to time, shall be paid in the event of my death, missing status, or other condition, making payment directly to me impossible, as follows:

$..... per month to (name) .....
(address) ..... as long as living,
and thereafter to (name) .....
(address) ..... as long as living,
and thereafter to (name) .....
(address) ..... as long as living.

"The balance, if any, and any amounts accruing after the death of all persons named in the above designations shall be held for me, or in the event of my death before receipt thereof, shall be paid to the legal representative of my estate. To the extent that payment to any other person may be required by law, the Company is hereby authorized to make payment to such person and deduct the amount so paid from the amount to be paid to the beneficiaries named above.

"The foregoing direction may be modified from time to time by letter signed by the undersigned, and any such modification shall become effective upon receipt of such letter by you.

"Any payments made by the Company pursuant to this direction shall, to the extent of such payment, fully release the Company from liability for further payments relating to the same type of obligation.

Executed this .... day of ..... 19...

.....

Pilot's signature.

Witness:

....."

B. Any payments due to any pilot under this Section which are not covered by a written direction as above required shall be held by the Company for such pilot and in the event of his death shall be paid to the legal representative of his estate.

C. Pilots shall maintain and continue to accrue seniority both for Company seniority and for pay purposes during periods in which they are missing.

Sickness and Injury:

Section 38.

A. Sick leave allowance will accrue to all pilots at the rate of one and one-sixth (1-1/6) days for each month of active service to a maximum of one hundred twenty (120) days. Pilots will not be eligible for sick leave benefits during the first three (3) months of active service. However, sick leave credit will accrue during that period.

B. A pilot will automatically be placed on sick leave on the day he is unable to fly his assignment and he will remain on sick leave until he advises the Company that he is available for duty. A pilot shall report available for duty as soon as physically fit.

C. A pilot on sick leave shall, in addition to base pay, be paid one-ninetieth (1/90) of his last three complete calendar months flight pay for each day off sick to the extent of his accrued sick leave. A pilot who has no sick leave credit accrued will not be eligible for any type of pay.

D. A pilot will be eligible for sick leave pay to the extent of his accrued sick leave during a month in which his flying pay does not exceed his minimum monthly guarantee; provided that payment for sick leave and flying pay shall not exceed a pilot's minimum monthly guarantee as provided in Section 10 of this Agreement.

E. A pilot will not be eligible for sick leave pay during a month in which his flying pay exceeds his minimum monthly guarantee as provided in Section 10 of this Agreement.

F. Only the number of sick leave days paid for will be deducted from a pilot's accrued sick leave credit. If the payment results in fractional days, one-half (½) day or more will be considered a full day; less than one-half (½) day will not be counted.

G. The Company may require a physician's certificate to confirm a sick leave payment claim.

H. There shall be deducted from sick leave payment any weekly indemnity pay such as Workmen's Compensation which is applicable to the same period of absence.

I. A pilot who is laid off due to a reduction in force shall have sick leave accrued prior to lay-off credited to him in the event of recall.

J. For each pilot sick leave credit prior to July 1, 1953 shall be established at the rate of one-half (½) day accrual for each month of service as a pilot with the Company to a maximum of one hundred twenty (120) days total sick leave credit. A pilot with a year or more of service with the Company as of July 1, 1953 shall be allowed a minimum of thirty (30) days sick leave credit by the Company provided that the difference between such thirty (30) days sick leave credit and the pilot's earned sick leave accrual shall be made up by the pilot in accordance with paragraph A. of this section before he may accrue sick leave credit beyond such thirty (30) days.

Section 39.

All orders to pilots involving a change in base station assignments, promotions, demotions, furlough, and leave of absence, shall be stated in writing, except that temporary assignments of pilots not holding regular runs shall not require a written order other than the necessary flight forms.

Section 40.

No pilot employed in the regular scheduled service of the Company shall be required to pay for training required and conducted by the Company for the purpose of procuring or maintaining the pilot's or the Company's air line certificates or other licenses.

Section 41.

A pilot shall not be required to pay damage costs of airplanes damaged in the service.

Section 42.

This Agreement shall be binding upon any successor or merged company or companies, or any successor in control of the Company.

Section 43.

The recommendations of the EAL Pilot Representatives shall be considered by the Company before making any change in the style, color, or material of uniforms.

Section 44.

The Company will expeditiously provide each pilot with a copy of the Agreement printed and bound in a convenient pocket-size booklet.

Section 45.

This Agreement shall supersede and take precedence over all Agreements, Supplemental Agreements, Admendments, Letters of Understanding, and similar related documents executed between the Company and the Association prior to the signing of this Agreement, with the exception of the Agreement effective July 23, 1941, covering the establishment and maintenance of a "System Board of Adjustment", and Letters of Agreement signed February 21, 1952, March 6, 1952 and March 26, 1952, as amended, provided that all rights and obligations, monetary or otherwise, which may have accrued prior to the effective date of this Agreement under the said Agreements, Supplemental Agreements, Amendments, Letters of Understanding, and similar related documents for the pilots of the Company shall remain in effect until satisfied or discharged.

Section 46.

This Agreement shall become effective (except as to pilots who on April 15, 1955 were off the payroll by reason of discharge or resignation) on July 1, 1954 except the following:

Section 12, Paragraph A (Deadheading); Section 17 (Hours of Service); Section 27, Paragraph C (School Pay Guarantee); Section 28 (Filling of Vacancies) and Section

38, Paragraph A and J (Sickness and injury), which shall become effective May 1, 1955.

This Agreement shall continue in full force and effect until June 1, 1957 and shall renew itself without change until each succeeding June 1st thereafter unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to June 1 in any year.

In Witness Whereof, the parties hereto have signed this Agreement this the 15th day of April, 1955.

For Eastern Air Lines, Inc.,
(S) S. L. SHANNON.

Witness:
(S) W. H. WHATLEY.

For the Air Line Pilots in the Service of Eastern Air Lines, Inc.,
(S) CLARENCE N. SAYEN.

Witness:
(S) J. P. TALTON,
(S) ELLIOT P. LYON,
(S) D. T. MUDD,
(S) M. H. EHLIES,
(S) KARL D. ULRICH,
(S) A. G. ROBERTSON, JR.,
(S) W. T. RIVENBARK,
(S) C. O. ROGERS.

Agreement between Eastern Air Lines, Inc., and the Air Line Pilots in the service of Eastern Air Lines, Inc., as represented by Air Line Pilots Association, International, covering the establishment and maintenance of a System Board of Adjustment.

It Is Mutually Agreed That:

(a) 1. The term "Company" as used herein shall be construed to mean Eastern Air Lines, Incorporated.

2. The term "Association" as used herein shall be construed to mean Air Line Pilots Association, International.

3. The term "Pilots Agreement" as used herein shall be construed to mean Agreement between Eastern Air Lines, Incorporated, and the Air Line Pilots in the service of Eastern Air Lines, Incorporated, as represented by Air Line Pilots Association, International, dated July 23, 1941, or any extention or renewal of that agreement.

(b) In compliance with Section 204, Title II, of the Railway Labor Act, as amended, there is hereby established a system board of adjustment for the purpose of adjusting and deciding disputes which may arise under the terms of the Pilots Agreement and which are properly submitted to it, which board shall be known as "Eastern Air Lines Pilots System Board of Adjustment" hereinafter referred to as the "Board".

(c) The Board shall consist of four (4) members, two (2) of whom shall be selected and appointed by the Association and two (2) by the Company, and such appointees shall be known as "Adjustment Board Members."

(d) The four members shall serve for one year from the date of their appointment or until their successors have been duly appointed. Vacancies in the membership of the Board shall be filled in the same manner as is pro-

vided herein for the selection and appointment of the original members of the Board.

(e) The Board shall have jurisdiction over disputes between any employee covered by the Pilots Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of the Pilots Agreement. The jurisdiction of the Board shall not extend to proposed changes in hours of employment, rates of compensation or working conditions covered by existing agreements between the parties hereto.

(f) The Board shall consider any dispute properly submitted to it by the President of the Association or by the Chief Operating Officer of the Company, when such dispute has not been previously settled in accordance with the terms provided for in the Pilots Agreement.

(g) Appointments of members of the Board shall be made by the respective parties within thirty (30) days from the date of the signing of this agreement and said appointees shall meet in the city of Miami, Florida within forty-five (45) days from the date of the signing of this agreement, and shall organize and select a Chairman and a Vice-Chairman, both of whom shall be members of the Board. The term of the office of Chairman and Vice-Chairman shall be one (1) year. Thereafter the Board shall designate one of its members to act as Chairman and one to act as Vice-Chairman for one (1) year terms. Each officer so selected shall serve for one (1) year and until his successor has been duly selected.

The officer of Chairman shall be filled and held alternately by an Association member of the Board and by a Company member of the Board. When an Associa-

tion member is Chairman, a Company member shall be Vice-Chairman, and vice versa. The Chairman or, in his absence the Vice-Chairman, shall preside at meetings of the Board and at hearings and shall have a vote in connection with all actions taken by the Board.

After the organization meeting referred to herein, the Board shall thereafter meet in the City where the general operations offices of Eastern Air Lines, Incorporated, are maintained (unless a different place of meeting is agreed upon by the Board) during the first week in May and the first week in November of each year, provided that at such times there are cases filed with the Board for consideration, and shall continue in session until all matters before it have been considered, unless otherwise mutually agreed upon.

(h) All disputes properly referred to the Board for consideration shall be addressed to the Chairman. Five (5) copies of each petition including all papers and exhibits in connection therewith, shall be forwarded to the Chairman, who shall promptly transmit one (1) copy thereof to each member of the Board. Each case submitted shall show:

1. Question or questions at issue.

2. Statement of facts.

3. Position of employee or employees.

4. Position of Company.

When possible joint submissions should be made, but if the parties are unable to agree upon a joint submission

then either party may submit the dispute and its position to the Board. No matter shall be considered by the Board which has not first been handled in accordance with the appeals provisions of the Pilots Agreement, including the rendering of a decision thereon by the Chief Operating Officer of the Company.

(i) Upon receipt of notice of the submission of a dispute, the Chairman shall set a date for hearing, which shall be at the time of the next regular meeting of the Board or, if at least two (2) members of the Board consider the matter of sufficient urgency and importance, then at such earlier date and at such place as the Chairman and Vice-Chairman shall agree upon, but not more than fifteen (15) days after such request for meeting is made by at least two (2) of said members, and the Chairman shall give the necessary notices in writing of such meeting to the Board members and to the parties to the dispute.

(j) Employees covered by the Pilots Agreement may be represented at Board hearings by such person or persons as they may choose and designate, and the Company may be represented by such person or persons as it may choose and designate. Evidence may be presented either orally, or in writing, or both.

On request of individual members of the Board, the Board may, by majority vote, or shall at the request of either the Association representatives or the Company representatives thereon, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties to the dispute, or by either party, or by the Board itself, or by either group of representatives constituting the Board.

The number of witnesses summoned at any one time shall not be greater than the number which can be spared from the operation without interference with the services of the Company.

(k) A majority vote of all members of the Board shall be competent to make a decision.

(l) Decisions of the Board in all cases properly referable to it shall be final and binding upon the parties hereto.

(m) In the event of a deadlock in the case of any dispute properly referable to it, it shall be the duty of the Board to endeavor to agree, within thirty (30) days from the date of such deadlock, upon a procedure for breaking such deadlock. A majority vote of all members of the Board shall be competent to reach such agreement and the action of the Board, operating under such procedure, shall be final and binding upon the parties hereto.

The thirty (30) day period specified herein with respect to agreement upon a procedure for breaking a deadlock may be extended by mutual consent of the parties hereto, but if agreement upon a procedure is not reached within such thirty (30) days and such thirty (30) days is not further extended by consent of the parties hereto, the Board shall have no further jurisdiction in that case.

(n) Nothing herein shall be construed to limit, restrict or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute

under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under law with respect to disputes which are not decided under the procedure established herein.

(o) The Board shall maintain a complete record of all matters submitted to it for its consideration and of all findings and decisions made by it.

(p) Each of the parties hereto will assume the compensation, travel expense and other expenses of the Board members selected by it.

(q) Each of the parties hereto will assume the compensation, travel expense and other expenses of the witnesses called or summoned by it. So far as space is available, witnesses who are employees of the Company shall receive free transportation over the lines of the Company from the point of duty or assignment to the point at which they must appear as witnesses and return, to the extent permitted by law.

(r) The Chairman and the Vice-Chairman, acting jointly shall have the authority to incur such other expenses as in their judgment may be deemed necessary for the proper conduct of the business of the Board and such expense shall be borne one-half by each of the parties hereto. Board members who are employees of the Company shall be granted necessary leaves of absence for the performance of their duties as Board members. So far as space is available, Board members shall be furnished free transportation over the lines of the Company for the purpose of attending meetings of the Board, to the extent permitted by law.

(s) It is understood and agreed that each and every Board member shall be free to discharge his duty in an independent manner, without fear that his individual relations with the Company or with the employees may be affected in any manner by any action taken by him in good faith in his capacity as a Board member.

(t) This agreement shall become effective as of the date of the signing hereof and shall continue in full force and effect until July 23, 1942, and shall renew itself without change until each succeeding July 23rd thereafter, unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least thirty (30) days prior to July 23rd in any year.

In Witness Whereof the parties hereto have signed this agreement, this the 23rd day of July, 1941.

For Eastern Air Lines, Inc.,
By S. L. SHANNON,
Vice President, in Charge of Operations.

For the Air Line Pilots in the Service of Eastern Air Lines, Inc.,
By DAVID L. BEHNCKE,
President, Air Line Pilots Association, International.

Witnessed: FRANK B. KERN,
Witnessed: JOHN H. HALLIBURTON,
Witnessed: VERNON A. PETERSON,
Witnessed: W. B. INMAN, JR.,
Witnessed: HOWARD N. MANN.

PLAINTIFF'S EXHIBIT 2.

(July 28, 1950.)

Mr. S. L. Shannon
Vice President-Operations
Eastern Air Lines, Inc.
Miami, Florida.

Dear Mr. Shannon:

First let me say that I sincerely appreciate the opportunity that you are giving me to come back on the line as captain.

Naturally, the six months layoff without pay for improper handling of flight 703 at Detroit on January 29, 1950 has been hard to take. However, I have had plenty of time to think about it during my enforced absence from the line, and I realize that I was wrong in this case and have been wrong in the other cases in the past, where I have been called on the carpet or disciplined by Management. I have made up my mind that I must behave myself if I expect to contiune as an employee of Eastern Air Lines.

Therefore, I hereby state that you may consider this letter to be my letter of resignation as an employee of Eastern Air Lines, which you may accept at anytime in the future, should you personally feel that I am not handing my job in the proper manner.

I sincerely hope that I will be allowed to continue as an employee with Eastern for many years to come, and I want to assure you that I shall do everything in my power to keep it that way.

Very sincerely yours,
PAUL S. WOOLEY.

PSW-k.

PLAINTIFF'S EXHIBIT 3.

Eastern Air Lines
Incorporated
Member of the National Safety
Council
Miami International Airport
Miami 48, Fla.

February 20, 1956.

Captain Paul S. Wooley
Eastern Air Lines, Inc.
Miami, Florida.

Dear Captain Wooley:

In reference to you letter of resignation dated July 28, 1950 please be advised that I personally do not feel that you have been handling your job in the proper manner and therefore your resignation as an employee of Eastern Air Lines, Inc. is hereby accepted to become effective immediately.

Please contact your Chief Pilot regarding any matters connected with this termination of your employment with the Company.

Very truly yours,
(Signed) S. L. SHANNON,
(S. L. Shannon),
Senior Vice President.

SLS: dk.

PLAINTIFF'S EXHIBIT 4.

Before the Eastern Air Lines Pilots System Board of Adjustment.

In the Matter of the Grievance of:
Paul S. Wooley.

Decision of the Board of Adjustment.

The Grievant herein contends that his employment as an airline captain with the Company was wrongfully terminated in that his purported letter of resignation, dated July 28, 1950 and accepted by the Company February 27, 1956, was not intended to have effect as such and that there was not sufficient cause or ground for his involuntary dismissal.

The Board finds:

1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association International, on the one hand and the Company on the other hand;

2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the

Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

Decision of the Board:
Grievance denied.

Signed at Miami, Florida August 1, 1956.

R. W. RIVENBARK,
(R. W. Rivenbark),
Chairman.
R. M. TEDLOCK,
(R. M. Tedlock),
Pilot Member.
S. L. SHANNON,
(S. L. Shannon),
Company Member.
GEORGE A. SMITH,
(G. A. Smith),
Company Member.

On October 18, 1956 ANSWER OF AIR LINE PILOTS ASSOCIATION, INTERNATIONAL and R. W. RIVENBARK and R. M. TEDLOCK was filed in the words and figures as follows:

(Title Omitted.)

The defendants, Air Line Pilots Association, International, and R. W. Rivenbark and R. M. Tedlock, answer-

ing the complaint heretofore filed by the plaintiff, Paul S. Wooley, in the above entitled cause, say:

I.

The defendants admit that the plaintiff, for several years, was employed as a pilot by the defendant, Eastern Air Lines, Inc. The defendants are advised, however, and so allege, that the plaintiff resigned from such employment effective February 20, 1956. The defendants further allege that the agreement "effective July 1, 1954," referred to by the plaintiff has been superseded by an agreement effective June 1, 1956. The provisions of the agreement of July 1, 1954, which are pertinent to this cause remain unchanged in the agreement of June 1, 1956. Except as specifically admitted hereinabove, the defendants deny the allegations contained in paragraph I. of the said Complaint.

II.

(a) The first paragraph of Paragraph II. of the said Complaint is admitted.

(b) As to the allegations contained in the second paragraph of Paragraph II. of the said Complaint, the defendants respectively show unto the Court that Air Line Pilots Association, International, is a voluntary, unincorporated association and that its principal office is in Chicago, Illinois. The said defendant is a labor usion whose membership is composed of pilots and copilots employed by scheduled air carriers. It is the duly authorized and accredited collective bargaining agent, under the terms and provisions of the Railway Labor Act, 45 USCA, Sections 151-163 and 181-188, for all of the scheduled air

carrier in the United States, including the defendant, Eastern Air Lines, Inc. During the period of his employment by Eastern Air Lines, Inc., the plaintiff was a third party beneficiary under applicable collective bargaining agreements negotiated by Air Line Pilots Association, International, with Eastern Air Lines, Inc. and he was represented by the Air Line Pilots Association, International, as his collective bargaining agent as defined by the Railway Labor Act. Except as specifically admitted hereinabove, the defendants deny the said allegations of the said second paragraph of the said Paragraph II. of the said Complaint.

(c) The defendants admit the remainder of the allegations contained in Paragraph II. of the said Complaint.

III.

The defendants deny that this Court has jurisdiction of the subject matter hereof. They admit the diversity of citizenship alleged in Paragraph III. a. and the last sentence and the second paragraph of Paragraph III. b. of the Complaint, but they show unto the Court that, under the Railway Labor Act and decisions of the Supreme Court of the United States and other courts, exclusive jurisdiction of the matters complained of by the plaintiff is in the Eastern Air Lines Pilots System Board of Adjustment. Except as specifically admitted hereinabove, the defendants deny the allegations contained in Paragraph III. of the said Complaint.

IV.

The defendants admit that the plaintiff was employed as a pilot by Eastern Air Lines, Inc., from on or about

November 15, 1936, to on or about February 20, 1956. As to the remaining allegations of Paragraph IV. of the said Complaint, the defendants are without knowledge except that they are advised and believe that the said allegations are correct.

V.

The defendants, upon information and belief, admit the allegations contained in Paragraph V. of the said Complaint except they are advised and believe that the disciplinary action taken against the plaintiff in 1950 was the result of an incident of important and significant rule infraction by the plaintiff not characterized as a mere "operational dispute".

VI.

As to the allegations contained in Paragraph VI. of the said Complaint, the defendants are without specific knowledge. For this reason, they deny the allegations contained in the said Paragraph VI.

VII.

As to the allegations contained in Paragraph VII. of the said Complaint, the defendants are without specific knowledge. For this reason, they deny the said allegations except they admit that the grievance of the plaintiff was settled as described by the plaintiff in his Complaint.

VIII.

As to the allegations contained in Paragraph VIII. of the said Complaint, the defendants respectfully show unto

the Court that two members of Air Line Pilots Association, International, namely, pilots Babbitt and Wood, negotiated with the defendant, Eastern Air Lines, Inc., in an effort to arbitrate the grievance of the plaintiff As a condition of the settlement described by the plaintiff in Paragraph VII. of his Complaint, it was agreed between plaintiff and the defendant, Eastern Air Lines, Inc., that the plaintiff would execute the letter attached to the Complaint as Plaintiff's Exhibit No. 2. The plaintiff was fully advised concerning the letter and the purpose thereof, and the letter itself is self explanatory.

IX.

As to the allegations contained in Paragraph IX. of the said Complaint, the defendants are without knowledge. For this reason they deny the said allegations except that they admit the letter attached to the Complaint as Plaintiff's Exhibit No. 2 and the execution thereof by the plaintiff. The defendants specifically show unto the Court that they are without knowledge as to who prepared the said letter or what conversations concerning it took place between the plaintiff and Mr. S. L. Shannon.

X.

The defendants are advised and believe that the allegations contained in Paragraph X. of the said Complaint are correct except they deny those allegations purporting to state the legal effect of the contract and the plaintiff's rights thereunder following the submission of his resignation.

XI.

The defendants are advised and believe that the allegations contained in Paragraph XI. of the said Complaint are correct.

XII.

The defendants admit the allegations contained in Paragraph XII. of the said Complaint except insofar as the plaintiff's resignation is referred to as "the so-called discharge."

VIII.

The defendants admit the allegations contained in Paragraph XIII. of the said Complaint except they deny that the plaintiff at any time challenged the jurisdiction of the System Board of Adjustment to hear and decide all questions and issues presented to it. The defendants show unto the Court that no such challenge was made by the plaintiff and that the plaintiff freely and voluntarily submitted all issues to the System Board of Adjustment and specifically requested the said Board to decide the question as to the legal effect of the letter of February 20, 1956, accepting the plaintiff's resignation and as to "the right of Eastern Air Lines, Inc., to accept a resignation of July 28, 1950" and as to the adequacy of the charges against the plaintiff to support a "discharge". Attached hereto and marked Exhibit A is a complete copy of the record before the System Board of Adjustment wherein it is shown the manner in which all issues were presented to the Board.

XIV.

The defendants deny the allegations contained in Paragraph XIV. of the said Complaint.

XV.

The defendants deny the allegations contained in Paragraph XV. of the said Complaint.

XVI.

The defendants deny the allegations contained in Paragraph XVI of the said Complaint.

Affirmative Defenses.

I.

As to the defendant, Air Line Pilots Association, International, the plaintiff makes no charges or allegations and prays for no relief of any kind. The said defendant, therefore, shows unto the Court that it is not properly a party defendant to the said alleged cause of action.

II.

As to the defendants, R. W. Riverbark and R. M. Tedlock, individually, the plaintiff makes no charges or allegations and prays for no relief of any kind. Therefore, the said defendants, in their individual capacities, are not properly parties defendant to the plaintiff's alleged cause of action.

III.

The plaintiff freely and voluntarily submitted all the issues involved in his Complaint to the Eastern Air Lines Pilots System Board of Adjustment pursuant to a contract provision (Plaintiff's Exhibit 1, attached to the Complaint, page 65, Paragraph (1)), and a provision of the Railway Labor Act (45 USCA 153, First (m), 184) specifies that the decision of such Board "shall be final and binding". Under the law and the contract the plaintiff is bound by the decision of the said Board of Adjustment (Plaintiff's Exhibit 4).

IV.

Exclusive jurisdiction of the matters set forth in the Complaint is conferred by law on the Eastern Air Lines Pilots System Board of Adjustment, and this Court lacks jurisdiction to grant the relief sought in the Complaint.

V.

The plaintiff is estopped to deny the validity and legal effectiveness of his resignation (Plaintiff's Exhibit 2).

VI.

The defendants are not guilty as charged by the plaintiff.

VII.

The Complaint fails to state a claim against the defendants upon which relief can be granted.

Wherefore, the defendants pray that the cause be dismissed against them and that costs be affixed against the plaintiff.

HOFFMAN, KEMPER & JOHNSON,
By WYATT JOHNSON,
Attorneys for Defendants, Air Line Pilots Association, International and R. W. Rivenbark and R. M. Tedlock.

1115 duPont Building,
Miami 32, Florida.

State of Florida,
County of Dade.

Before Me, the undersigned authority, a Notary Public duly authorized to administer oaths and take acknowledgements in the State of Florida personally appeared this day, R. W. Rivenbark, who being by me first duly sworn, says that he has read the foregoing Answer and is familiar with the contents thereof; that the matters and things set forth and alleged therein are true and correct; that he makes this affidavit in behalf of himself and R. M. Tedlock, individually, and in behalf of himself and R. M. Tedlock as members of the Eastern Air Lines Pilots System Board of Adjustment.

R. W RIVENBARK.
(R. W. Rivenbark).

Sworn to and subscribed before me this 18th day of October, 1956.

ROSE W. HERSHEY,
Notary Public, State of Florida at Large.

(Notary Seal)

My Commission expires: May 31, 1957.

State of Florida,
County of Dade.

Before Me, the undersigned authority, a Notary Public duly authorized to administer oaths and take acknowledgments in the State of Florida, personally appeared this day, Robert J. Rohan, who being by me first duly sworn, deposes and says that he is the Vice President, Region 2 of Air Line Pilots Association, International; that he has read the above and foregoing Answer and is familiar with the contents thereof; that the matters and things set forth and alleged therein are true and correct; that he is making this affidavit as reprensentative of Air Line Pilots Association, International.

ROBERT J. ROHAN,
(Robert J. Rohan).

Sworn to and subscribed before me this 18th day of October, 1956.

ROSE W. HERSHEY,
Notary Public, State of Florida
at Large.

(Notary Seal)

My Commission expires: May 31, 1957.

I hereby certify that copies of the foregoing Answer were mailed by me this 18th day of October, 1956, to the following:

Ward & Ward,
1229 duPont Building,,
Miami, Florida,
Attorneys for Plaintiff.

Charles M. Moon,
Attorney at Law,
516 Ingraham Building,
Miami, Florida.
Of Counsel for defendants, Eastern Air Lines, Inc. and S. L. Shannon and Geirge Smith.

WYATT JOHNSON,
Of Counsel for defendants, Air Line Pilots Association, International and R. W. Rivenbark and R. M. Tedlock.

EXHIBIT A.

The following is Exhibit A of Defendants Air Line Pilots Association International and R. W. Rivenbark and R. M. Tedlock answer.

Hearing Before the System Adjustment Board, Eastern Air Lines, Incorporated, Commencing at 9:00 o'clock A.M., June 20, 1956, in the Hunt Room, Miami Springs Villas, Miami Springs, Florida.

Subject: In Re. Grievance of Paul S. Woolley.

Members of the System Adjustment Board Present:
Mr. R. W. Rivenbark, Chairman,
Mr. S. L. Shannon,
Mr. George A. Smith,
Mr. R. M. Tedlock.

Appearances:
Mr. F. Harold Bennett, 5500 South Cicero Avenue, Chicago, Illinois, on behalf of the Air Line Pilots Association.

Mr. W. Glen Harlan, of the firm of Gambrell, Harlan, Russell, Moye & Richardson, Suite 825, C. & S. Bank Building, Atlanta 3, Georgia, on behalf of Eastern Air Lines, Inc.

Mr. Rivenbark:

Before we start, there have been any number of people who asked us questions as to what is going on here. Possibly I can run through it very quickly.

The Board is composed of Mr. Shannon, Mr. Smith, Mr. Tedlock and myself on three of the cases. On the other two cases, Don Clifford is the Board Member. The attorneys for the Company are Mr. Harlan; Mr. Donovan is the Court Reporter who is keeping the record; Mr. Bennett and Mr. O'Brien are the Association's lawyers.

The usual procedure, the standard procedure in these happenings is for the Board to hear all of the testimony and the evidence in the case, and the Board will go into an executive session and will attempt to come out with a decision. There is always a possibility that they will be unable to make a decision. When we left yesterday afternoon, it was my understanding that we would

hear the Woolley case second. I am advised that the grieving parties got together and they would prefer to have the Woolley case first. Mr. Harlan said he had not planned that as of the t me we left, but it will be agreeable with him to go ahead.

Mr. Bennett:

I have no objection. It may be that it would be an opportunity at this time for me to make clear to the Board and to counsel for the Company the position which the Association and Mr. Woolley take with respect to his case.

First of all, we have the issue, as I understand the problem, of whether or not Mr. Woolley has, in fact, resigned his position with the Company, and the Association and Mr. Woolley take the position that he has not resigned. The basis for my statement is that notwithstanding the fact that in 1950, Mr. Woolley signed a document which purports to be a resignation to be accepted sometime in the future upon an eventuality that this document is of no legal import because it circumvents the Employment Agreement. I have a case upon the point which is on all fours, which I will cite for you and counsel, and I would like to discuss it with you for a moment. The case was a precisely similar case heard by the Railway Adjustment Board under the Railway Labor Act and it was Railway Case No. 5269.

In that case the Company took from the employee an undated resignation to be held in the Company's files to be accepted by the Company upon an eventuality when the Company had decided, if they decided that at some later date they chose to accept the resignation and let the man go. The Railway Adjustment Board said that the acceptance of an undated resignation by a carrier from an employee would be understanding that he should

continue in the employ of the Company subject to the right of the employer to accept the resignation at any time, and upon any circumstances they felt was proper, circumvented the investigation and hearing portions of the contract and the dismissal which occurred in this indirect manner would not be sustained.

The reasoning in that case, I think, is sound and it becomes very evident that if the Board or a Court would permit this character of dismissal, what we would get into is this. The Employment Agreement provides that a man shall not be severed from his employment except under circumstances which warrant it. That is to say, he is entitled to an investigation and hearing upon the circumstances of his dismissal, to make sure that the Company has had justifiable cause. With a letter of resignation on file, such as was on file here and the Company's ability under the circumstances and such a resignation to accept it upon the thought in the mind of the Company that there was, in fact, justifiable cause for a severance; it is easily seen that the Company could be mistaken and upon investigation and hearing, it would be demonstrated conclusively or at least demonstrated to the satisfaction of someone, that the Company was in error here, and that obviously they shouldn't have severed the employee on the grounds which they chose.

And so as I stated, it is the contention of the Association and Mr. Woolley, that this letter of resignation and its acceptance, if you want to say it that way, or the notice from the Company on a certain date that the Company was accepting his resignation, is nothing more or less than a discharge of Mr. Woolley for whatever reason the Company had at the time, and that he is entitled to an investigation and hearing upon those grounds. I don't know and I haven't known up to this moment, except from the record as it comes before me that the

Company intends to stand upon the resignation. If they do, I am prepared to meet that issue in the fashion which I have indicated and then go to the merit.

Now that brings me to the point of the hearing, if we have such a hearing upon the merits of the case and so far as that is concerned, the Company has indicated its reasons in a general way for their dismissal of Mr. Woolley on the date on which he was dismissed, the happenings on two flights and they named the numbers of the flight. In discharge cases such as this, it is our contention and I think the cases are all clear upon the subject, that the burden lies with the Company and the burden of proof laying with the Company, the Company is, of course, in the ordinary course of things, required to go first because we have nothing to meet unless they do. I wouldn't quibble about that if the Company insists upon our going first. and I will but I think it would be not of any consequence because the only thing I would be able to do is put Mr. Woolley on the stand and get his history and ask him if he knew of any reason why he should be discharged, and if he says no, that would be my first goal and I would have to seek to rebut any evidence the Company put in that he did in fact do something, and so if I could be informed as to precisely the position of the Company, we would know where we are heading.

To summarize the position of the Association and Mr. Woolley, Mr. Woolley has not resigned. The letter of supposed resignation to be accepted by the Company at any time and for any reason, circumvents his rights under the Employment Agreement and is of no legal consequence, and that Mr. Woolley has, in fact, been discharged for whatever reason, and that the burden of showing that Mr. Woolley is rightfully discharged lies with the Company and they should go first.

Mr. Harlan:

Mr. Chairman, on the question of the validity of the resignation, I may say a good deal of time was spent in our law office trying to determine whether there was any legal defect in such a resignation and the acceptance of it by the Company. We have found no such legal defect. I will say I have not researched all of the thousands and thousands of decisions by the various divisions of the National Railway Adjustment Board to see if possibly somewhere along, one or two divisions might have come down with a decision such as that referred to by Mr. Bennett.

I would be a little surprised if somebody had not ruled that way at sometime or other, but I have not found any decision by any competent Court that holds that way, and I would be a little surprised if any Court would hold that way in this type of case, where the man came back with the Company only because he signed such a letter of resignation and where the letter of resignation, as I understand it, was not urged upon him by the Company or anyone else, except of his advisors with the Air Line Pilots Association, which is his collective bargaining representative. I believe that the resignation is valid. It was properly accepted by the Company and that should conclude the case. However, I think we can also show even if it were not regarded as a discharge case that there was adequate reason for the discharge, and on either of these grounds, the severance of his employment should be upheld by this Board.

On the question of the burden of proof, we are prepared to show the reason why the Company decided to accept his resignation, but I don't agree with Mr. Bennett that we should go first. It is the universal practice in cases of this kind where a man is appealing from a previous decision that he should go first, and even though Mr.

Bennett may feel a little bit handicapped that he does not know all the facts, I would suggest that he do go ahead with whatever he has to show, and I may say I don't think that Mr. Bennett is handicapped to the extent he says, inasmuch as it seems to me that Mr. Woolley did know what these specific charges were.

They were set out in a letter to him from Mr. Shannon. He is fully aware of all the circumstances surrounding the two flights involved, and I believe that Mr. Woolley will be in a position to state any defense he may have with respect to his conduct on the occasions referred to in that letter. I don't think he is badly handicapped, but I will say if he feels later that any facts brought out by the Company, that he has not had an adequate opportunity to answer, he will have a chance to go back on rebuttal, if necessary.

Mr. Bennett:

As I understand the position of the Company now, the Company is contending that the resignation and its acceptance is proper and legal an, of course, that would be an issue in the case and if—Indicated previously I would not quibble about going first or last so long as the record is clear what the position I take is that the burden of proof in a discharge case, and that is the way I regard this, is upon the Company, whether counsel agrees with me or not.

With that, I am ready to go ahead.

Thereupon: PAUL S. WOOLLEY, a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Bennett):

Q. State your name for the record.

A. Paul S. Woolley.

Q. How old are you?

A. 47.

Q. Are you married?

A. Yes.

Q. Do you have a family?

A. Yes.

Q. How many children do you have?

A. Three children.

Q. When did you start to fly?

A. If you mean when did I learn to fly—

Q. When did you begin to fly?

A. I entered the Army Flying School at Brooks Field in July of 1931.

Q. In the Army?

A. Yes.

Q. Will you recount for us your experience as a pilot from that time forward?

A. I finished flying school in one year. I had approximately two years active duty with the Army, and after that some time spent in the regular army as an enlisted pilot and came with Eastern Air Lines in November of 1937.

Q. You have been continuously in the employ of Eastern Air Lines since that time?

A. Yes.

Q. When did you check out as pilot?

A. In December of 1939.

Q. You have continuously flown as captain for Eastern Air Lines since that time?

A. Yes.

Q. How many hours of flight time do you have to your credit, approximately?

A. Approximately 18,500.

Q. Of those 18,500 hours, how many hours would you estimate are instrument hours?

A. An estimation would be somewhere around 1300 or 1400 hours. That is actual instrument time.

Q. I show you a copy of a letter dated February 20, 1956 and ask you to state if you received such a letter from Eastern Air Lines, Mr. Shannon?

A. Yes, I did.

Mr. Smith:

Which letter are you referring to?

Mr. Bennett:

This letter is dated, it is on Eastern Air Lines stationery and is dated February 20, 1956. It is addressed to Mr. Woolley:

"Dear Captain Woolley:

"In reference to your letter of resignation dated July 28, 1950, please be advised that I personally do not feel that you have been handling your job in the proper manner and therefore your resignation as an employee of Eastern Air Lines, Incorporated, is hereby accepted to become effective immediately.

"Please contact your Chief Pilot regarding any matters connected with this termination of your employment with the Company.

"Very truly yours,

"Signed S. L. Shannon, Senior Vice President."

(By Mr. Bennett):

Q. When you received that letter, you filed a grievance and asked for an investigation and hearing?

A. Yes, sir.

Mr. Bennett:

That letter, if the Board please, is attached to the Submission and is a part of the record already.

(By Mr. Bennett:

Q. I show you the letter dated February 27, 1956, addressed to Mr. Shannon by yourself. Is that the request for an investigation?

A. Yes, sir, that is the request.

Q. I show you a copy of a letter dated February 27, 1956, addressed to you by Mr. Shannon and ask you if you received that letter from Mr. Shannon?

A. Yes, I did.

Mr. Bennett:

The second letter I ask be read into the record.

Mr. Harlan:

Is that attached to the grievance?

Mr. Bennett:

I am not sure.

Mr. Harlan:

Exhibit No. 1 is the letter you read and Exhibit No. 2 is Mr. Woolley's request for investigation and hearing dated February 27, 1956.

Mr. Bennett:

And the third one is a letter from Mr. Shannon.

Mr. Harlan:
Those had the same date?

Mr. Bennett:
Yes, sir.

Mr. Harlan:
The letter of February 27, 1956 from Mr. Shannon to Mr. Woolley?

Mr. Bennett:
Yes, that is the one I have reference to.

Mr. Harlan.:
Exhibit No. 4 is the letter of March 2, 1956, from Mr. Shannon to Mr. Woolley.

Mr. Smith:
I wanted you to identify the letter so that we can follow the testimony.

Mr. Bennett:
Off the record.

(Discussion off the record.)

(By Mr. Bennett):
Q. Mr. Woolley, after you received this letter, did you then accept Mr. Shannon's invitation to come to his office on the following day?
A. Yes.
Q. Did you go to his office?
A. Yes.
Q. And who was present?
A. Mr. Shannon, Mr. Stone and Mr. Smith.

Q. And yourself?

A. And myself.

Q. Did you discuss the letter of resignation?

A. I wouldn't say we discussed it. It was mentioned.

Q. But there was no long discussion of it of any kind?

A. No.

Q. Did you discuss the happenings or the conduct of flight 647 of February 6, enroute to Miami?

A. Yes.

Q. Did you discuss the conduct in handling flight No. 644, February 5, 1956, enroute into Boston?

A. No.

Q. If I understand you correctly, you had no discussion with Mr. Shannon, and there was nothing mentioned to you with respect to flight 644 from Miami to Boston of February 5, 1956?

A. You are correct.

Q. But there was a discussion of flight 647 of February 6, 1956, enroute into Miami?

A. That is correct.

Q. You were the captain in command of flight 644 dated February 5, 1956, enroute to Boston?

A. That is correct.

Q. That flight originates in Miami and goes to Washington and Boston?

A. Yes.

Q. And at Boston you lay over?

A. Yes.

Q. How many hours were you there?

A. Approximately 18 hours.

Q. Your next trip is the return trip No. 647, Boston direct to Miami?

A. Yes.

Q. You were also captain in command of flight 647?

A. Yes.

Q. Dated February 6, 1956?

A. Yes.

Q Are you aware of any happenings on flight 644 of February 5, 1956, or any conduct on your part on that flight, or any happenings on flight 647 of February 6, 1956, or any conduct on your part as a captain in command which would justify the Company's dismissal of you as a pilot employee?

A. No.

Q. So far as you know and so far as you are aware, were both of these flights conducted in a safe manner?

A. They were.

Q. And in accordance with all of the rules and regulations which govern such flights?

A. They were.

Q. Did you have any accidents or was there anything untoward that happened during these flights with the authorities?

A. No.

Q. So that as far as you are concerned, Mr. Wooley, and so far as you are informed, Mr. Shannon's statement in his letter about his acceptence of your resignation or as I would more properly put it, your severance from the Company, was due to the unsafe flying of 644 of February 5, 1956, enroute to Boston, and your handling of 647 of February 6, 1956, enroute to Miami, is without foundation?

A. That is correct.

Q. You are aware of no reason or no happening upon these flights that would justify such a charge or a dismissal?

A. That is true.

Mr. Bennett:

That is all.

Cross Examination.

(By Mr. Harlan):

Q. Mr. Wooley, the first letter from Mr. Shannon which was read into the record by Mr. Bennett, referred to a letter of resignation by you dated July 28 1950. You did sign such a letter of resignation?

A. I did.

Q. I would like to show you this letter dated July 28, 1950 and ask you if that is the letter?

A. That is the letter.

Mr. Harlan:

Possibly the best thing to do is read that letter into the record, since it is referred to. It is on Eastern Air Lines stationery and reads as follows:

"July 28, 1950.

"Mr. S. L. Shannon, Vice President, Operations, Eastern Air Lines Incorporated, Miami, Florida.

"Dear Mr. Shannon:

"First let me say that I sincerely appreciate the opportunity that you are giving me to come back on the line as captain.

"Naturally, the six months layoff without pay for my improper handling of flight 703 at Detroit on January 29, 1950, has been hard to take. However, I have had plenty of time to think about it during my enforced absence from the line, and I realize that I was wrong in this case and have been wrong in the other cases in the past, where I have been called on the carpet or disciplined by Management. I have made up my mind that

I must behave myself if I expect to continue as an employee of Eastern Air Lines.

"Therefore, I hereby state that you may consider this letter to be my letter of resignation as an employee of Eastern Air Lines, which you may accept at any time in the future, should you personally feel that I am not handling my job in the proper manner.

"I sincerely hope that I will be allowed to continue as an employee with Eastern for many years to come, and I want to assure you that I shall do everything in my power to keep it that way.

"Very sincerely yours,
"PAUL S. WOOLEY."

(By Mr. Harlan):

Q. Are the statements made in that letter true and correct?

A. If I may have a little leeway—

Q. I want to ask you about it.

A. It implies something and if I may have a little leeway with the Board in answering this question, I would like it.

Mr. Bennett:

Mr. Wooley, many times questions cannot be answered "yes" or "no". If it is necessary for you to qualify your answer in answering a question, you are always at liberty to do so.

The Witness:

I will make a qualified statement—

Mr. Rivenbark:
Excuse me a minute.

Off the record.

(Discussion off the record.)

Mr. Rivenbark:
I believe that the Board would like to take an opportunity of five minutes for an executive session. We will recess for a few minutes.

(After a five-minute recess, the hearing proceeded as follows):

Mr. Rivenbark:
The Board has had a request from the Company members of the Board that all witnesses in this case be sworn. This is customary in the proceedings and the entire Board agrees. The reporter will administer the oath. I might also suggest to Mr. Bennett that he take a few minutes, if desirable with the witness, and decide if they want to go over the previous testimony or adopt it as it stands.

Mr. Bennett:
I don't have to have any conference with the witness. I have no objection to Mr. Woolley being sworn. I am positive he has not any and after he is sworn, I will confirm the record.

Off the record.

(Discussion off the record.)

Mr. Bennett:

Mr. Woolley, having been administered the oath to speak the truth, the whole truth and nothing but the truth, if the same questions which I put to you prior to your having been sworn were put to you, would your answers be exactly the same?

The Witness:

No. They would be with the exception of one question. I am actually 49 years old.

Mr. Bennett:

Is that the only one?

The Witness:

That is the only one.

Mr. Bennett:

What was your answer previously?

The Witness:

47.

Mr. Bennett:

If all of the other questions were asked you were put to you in the same fashion that I put them now, now that you have been sworn, would your answers be the same?

The Witness:

They would.

Mr. Bennett:

There is one other question I intend to ask you. Have you ever been in an accident with an aircraft of any kind?

The Witness:

I have been in one military accident that happened on landing with slight damage to the airplane. Outside of that, no others.

Mr. Bennett:

In your career as a commercial air line pilot, you have never scratched an airplane, so to speak?

The Witness:

That is true.

Mr. Bennett:

Nothing further.

(By Mr. Harlan):

Q. The pending question at the time of the recess was whether the statements contained in your letter of resignation dated July 28, 1950, were true and correct?

Mr. Bennett:

Mr. Harlan, the letter contains a great many, many statements. Don't you think it would be more appropriate if you were to ask him with respect to any one of the statements?

Mr. Harlan:

I thought if there were any statements that were not true and correct, he could say so.

The Witness:

There were several statements I do not consider true and correct. My signature is on the letter but I did not write the letter.

(By Mr. Harlan):

Q. Who wrote the letter?

A. I do not know actually.

Q. Who suggested to you that you write the letter?

A. Two people, Mr. Babbitt and Mr. Wood.

Q. Who are Mr. Babbitt and Mr. Wood?

A. Eastern Air Line pilots, captains.

Q. Did they at that time have any official status with the Air Line Pilots Association?

A. I understand they did.

Q. Do you know what their position was?

A. I understand they were members of the System Board, among other things.

Q. Was one of them the Master Chairman?

A. To the best of my knowledge, he was.

Q. Which one was that?

A. I believe it was Mr. Babbitt but I am not positive.

Q. Did Mr. Wood have an official position with the Air Line Pilots Association International?

A. I undertsand he did.

Q. They were the ones who suggested you write a letter like this?

A. They were.

Q. Do you know whether they wrote the letter?

A. I do not.

Q. Where did you first see this letter?

A. They brought it to me at the house.

Q. Did you think some of the statements in there were untrue and correct at that time?

A. I did.

Q. Which statements were they?

A. That I had been wrong in some things I did.

Q. You didn't think you had ever been wrong?

A. That is not true. May I have the letter?

Mr. Bennett:

Here it is.

The Witness:

The first statement, I think is wrong, about flight 703 which was not improperly handled, and I said so at the time; I however, I said I will give in on that point. The rest of the letter, I don't know exactly what they were referring to. That is a broad statement and I will not be one to say I had never been wrong.

(By Mr. Harlan):

Q. You had been disciplined in the past?

A. Yes.

Q. Did you think you were wrong when you were disciplined before?

A. Not necessarily?

Q. Before 1950?

A. Probably; I don't know what you are specifically referring to. I could have been.

Q. Whoever wrote the letter, this was your letter because you signed it. What were you referring to?

A. I wasn't referring to anything specifically.

Q. Apparently you were referring to all the previous cases in which you had been called on the carpet or disciplined by Management?

A. All right.

Q. In all of those cases, were you wrong?

A. I had decided, rather than argue the point any longer, I would accept I was wrong.

Q. With respect to flight 703, Detroit, January 29, 1950; would you state what happened that day?

Mr. Bennett:

I am going to object for the record, Mr. Harlan, because this letter speaks for itself, and so far as the in-

cident of flight 703 of January 29, 1950 is concerned, I don't think it bears upon the issue here in any regard, and I do think if we go into that, it would only tend to prejudice Mr. Woolley's position here. The stated reason for Mr. Woolley's dismissal or the acceptence of his resignation, which as I have already indicated is nothing more, in my book, than the severance on the two flights, neither one of which are 703 of January 29, 1950.

I have not made any objection to the letter because I think it is proper that the letter go into evidence. I don't think it is of any legal consequence but I am going to object for the record to the detailing of any incident except the incidences of the two flights mentioned in Mr. Shannon's letter wherein he accepts the resignation.

So long as my position is clear in the record, and if counsel insists, I am not in a position to stop him, but I would suggest to the Board that properly the evidence is not complete and really shouldn't go into the record.

Mr. Harlan:

Let me say I do not agree with your position on that; however, insofar as this particular question is concerned, I will withdraw it.

(By Mr. Harlan):

Q. Mr. Woolley, you were disciplined as a result of handling of flight 703, Detroit, January 29, 1950, were you not?

A. That is correct.

Q. What was the form of that discipline?

A. Six months away from the Company without pay, and signing the letter of resignation to which you have just referred.

Q. Was the original discipline six months?

A. They were both together; the disciplinary action was two parts, six months layoff and signing a letter of resignation.

Q. The Company said you had to sign a letter of resignation?

A. They did.

Q. Who in the Company told you that?

A. I will have to say again that knowledge is second-hand from Mr. Wood and Mr. Babbitt, but they told me that Mr. Shannon insisted on it.

Q. Mr. Shannon never told you that?

A. I am not sure whether he did or not. I couldn't answer that question positively.

Q. To be more specific about the original discipline, were you not discharged?

A. The way I understand it under the Employment Areement, I was not discharged. I had a letter of discharge in my possession.

Q. What you mean is that originally the Company discharged you, and then at the end of six months they took you back?

A. No.

Q. What do you mean?

A. I mean that I was discharged. It came before the Grievance Section and this was a settlement. It all happened before the six month period.

Q. Did you file a Grievance?

A. I did.

Q. How far was that grievance processed?

A. My understanding was it was processed past the second hearing.

Q. It never was appealed to Mr. Shannon.

A. I am not absolutely positive. The record would have to show that.

Q. At some time before the end of six months, and while the discharge as far as the Company was concerned was still outstanding, a statement was agreed upon between Mr. Babbitt and Mr. Wood and Mr. Shannon, that you could come back at the end of the six months layoff?

A. That is my understanding provided I would sign the letter of resignation.

Q. It was your understanding you would not have been taken back by the Company without the letter of resignation?

A. My understanding was that if I didn't agree to this settlement, we would have to process this hearing on through the System Board and the other processors.

Q. As far as the Company was concerned, the Company would not voluntarily take you back without the letter of resignation?

A. That is what I understand.

Q. Did you ever at any time write a letter to Mr. Shannon withdrawing this letter of resignation?

A. No.

Q. Did you intend before you signed this letter and gave it to Mr. Shannon or sent it to him, that he could act on it?

A. No.

Q. You did not?

A. No.

Q. This was a trap to get the Company to take you back?

A. I don't know about the language but it was a settlement, I will say.

Q. You had no intention that Mr. Shannon should be permitted to do what you authorized him here to do, is that right?

A. I can't say yes or not to that. Actually I will have to qualify the statement in the fact that as it was put to me, if I did the things that I had done before, I was liable to discharge and liable to have the resignation accepted, and it was my full intent never to do any of the things to which they had allegedly referred to.

Q. You said here he could accept this letter of resignation at any time in the future should you personally feel that I am not handling my job in the proper manner. Did you mean he should be able to do that or not?

A. I don't think I meant that, no, because it is not in my words. I didn't write the letter.

Q. You signed it?

A. It was told to me that there can be a letter written which will be no good. Therefore, go ahead and sign it and get your job back and go to work.

Q. You were informed this letter would have no effect at all

A. I was.

Q. Who told you that?

A. Mr. Babbitt and Mr. Wood.

Q. Did you tell Mr. Shannon that?

A. No, I don't imagine I did.

Q. Regardless of what you imagined, did you tell him?

A. If it may be written into the record at this time, I would like to make a statement to Mr. Harlan as to what I did say to Mr. Shannon upon presenting him with the letter.

Q. You can make any statement you want to. I would like to have you answer my question as to whether or not you told Mr. Shannon you had signed this letter but it didn't mean anything?

A. I didn't tell him that at the time.

Q. Did you tell him anything similar to that?

A. No.

Q. Then or any time later on?

A. No.

Q. Go ahead and make a statement.

A. I had a conference with Mr. Shannon and we both agreed the slate was clean.

Q. Was this at the time you gave him the letter?

A. That was at the time I gave him the letter. The slate was clean. If I did anything he didn't like, or if he heard of my doing anything he didn't like, he would call me before him and let me discuss it with him. Between that time and this, he has not called me.

Q. Mr. Shannon did discuss this particular incident with you, did he not?

A. Not at the time the letter was accepted, I don't believe.

Q. Did you have a meeting with him, however, on—what was the date of that meeting—February 29, is that correct?

A. Is that the date of the letter?

Q. That is the date he stated in his letter "I will be glad to talk with you Wednesday, February 29, 1956."

A. Yes, I had a meeting.

Q. You met with him on that day?

A. That is true.

Q. You previously had received from Mr. Shannon this letter from which I quote in which he stated that: "For your information, my action in accepting your resignation was based in large part on the unsafe flying of flight 644 of February 5, 1956 enroute into Boston, and your handling of flight 647 of February 6, 1956 enroute into Miami." You had received that?

A. Yes.

Q. Did Mr. Shannon give you an opportunity to say anything you wanted to say at that meeting?

A. I would say he did.

Q. He didn't tell you there was any subject you could not discuss?

A. He told me this was an informal hearing and anything that was said would be all right.

Q. Did you tell him everything that you wanted to tell him at that time?

A. I probably did.

Q. Had you talked to Mr. Shannon before the February 29th meeting?

A. You mean in reference to this?

Q. Yes.

A. Yes, I talked to him the day I was handed the letter.

Q. The letter was handed to you personally?

A. By Mr. Stone.

Q. And you then did what?

A. I asked Mr. Stone to talk to Mr. Shannon and ask him if he would see me. Mr. Shannon said he would and we went directly to his office.

Q. Did Mr. Shannon listen to what you had to say at that meeting?

A. He listened for five or ten minutes.

Q. Was he in a hurry in pushing you out the door?

A. I don't think I would say that, no.

Q. He listened to everything you wanted to tell him at that time, too?

A. I am sure he did.

Q. Did Mr. Shannon indicate to you on this occasion or—I assume that was on February 20, 1956; it was the date that the resignation was accepted? Is that the correct date you met with him first?

A. That must be the date. That is the date of the letter, and I am assuming it was that date. It was the same day I was handed the letter and I am assuming it was February 20th. I am not positive.

Q. Did Mr. Shannon indicate to you at that time he had investigated these incidents which were referred to in his latter letter?

A. Not specifically.

Q. Did he indicate to you at all at that time what the basis was for his accepting the resignation?

A. No, I don't believe he did.

Q. On February 29th you knew what the basis was. Did he indicate at that time he had investigated it?

A. Did he indicate on February 29th that he had investigated these two trips?

Q. Yes.

A. He did.

Q. After your meeting of February 29th, you then got a letter from Mr. Shannon stating that he was not changing his decision, is that right?

A. That is right.

Q. What did you do after that?

A. I contacted the Air Line Pilots Association and told them I would like to have this go before the System Board.

Q. You did that immediately after getting Mr. Shannon's letter

A. I wouldn't say immediately but in due process of time.

Q. Did you contact anybody else with the Company in an attempt to have the decision changed?

A. I might have.

Q. Did you

A. I don't know what you are referring to but it is possible I could have.

Q. To refresh your recollection, did you write to Captain Rickenbacker?

A. I did.

Q. And Captain Rickenbacker upheld Mr. Shannon's decision?

A. He did.

Q. Was it after you got this final decision from Captain Rickenbacker that you contacted the ALPA to request that it be taken to the Adjustment Board?

A. No.

Q. You did that before you wrote to Captain Rickenbacker?

A. Yes.

Q. I am simply paraphrasing because I can't relate what you said but I gather that you were saying in response to Mr. Bennett's question awhile ago, that you did not consider that there was anything unusual about the handling of flights 644 and 647 on the days referred to in Mr. Shannon's letter?

Mr. Bennett:

I think the words were "unsafe or any untoward or unsafe incident."

Mr. Harlan:

I do recall.

(By Mr. Harlan):

Q. Would you consider it untoward that you would be flying into Boston 200 feet below the glide path when there are smoke stacks only about 50 feet below the position your airplane was in?

A. I might not. To consider the altitude you refer to, 50 miles out, 200 feet would be all right, in my opinion.

Q. Suppose it was a mile or two out?

A. A mile or two might be unsafe.

Q. Suppose three or four miles out?

A. There again, it might or might not.

Q. With reference to the particular flight that day, do you recall the position you would have been in three or four miles out, 200 feet below the glide path?

A. I might recall that offhand. It is possible I can recall that incident but I can't recall being 200 feet below a mile out, if that is what you are referring to.

Q. Say three or four miles out?

A. It is possible I could have been. It is possible the airplane could have been 200 feet below the glide path four miles out and still be not in any unsafe position.

Q. How about three miles out?

A. It is possible it could have been three miles and not in an unsafe position. I am not exactly familiar with the glide path three and four miles out.

Q. Recalling your approach to the Boston Air Port that day on that flight, would it have been safe to be 200 feet below the glide path three miles out?

A. May I ask you to qualify the word "safe?" If you mean did I hit an obstruction or crack up the airplane, I will say no, but safety has to be a rather broad statement and it will have to be qualified in this instance because you are trying to tie something down I am unable to tie down for you.

Q. Would you say you had—at that altitude, you would have the margin of safety you normally would feel comfortable with?

A. What altitude?

Q. 200 feet below the glide path three miles out?

A. I can't answer that question because I don't know the altitude three hundred feet below the glide path three miles out.

Q. Did you follow the current established procedure in your approach to Boston on that flight on that day?

A. It is possible I might have deviated some.

Q. Aside from the possibility, did you?

A. I did in one instance.

Q. What instance was that?

A. I made a left turn when it says in the procedure you shall make a right turn.

Q. If you were 200 feet below the glide path three to four miles out, would that be in accordance with standard procedure?

Q. Aside from possibilities, would it be?

A. I guess I will have to grant you that point.

Q. Would you consider there was anything untoward in flying through the guided missile firing area off of Patrick Air Force Base at a time when the Air Traffic Control had closed that route?

A. I might consider it untoward had they closed the route and had we been in there after they had closed it.

Q. You don't think there is anything untoward in refusing to accept a clearance which required you to go inland because the Air Traffic Control Authorities thought that the plane could not clear that area in time?

A. I didn't refuse an Air Traffic Control order to go inland.

Q. Air Traffic Control did give you a clearance which said you were to go inland?

A. That is correct.

Q. You did not go inland?

A. I did go inland.

Q. At what point?

A. Vero Beach.

Q. The clearance which you got was to go inland before that, was it not?

A. The clearance I accepted was to go inland at Vero Beach.

Q. You refused to accept the clearance which said you were supposed to go inland of Patrick Air Force Base?

A. I don't think I would like for you to put it I refused to accept it. Let me say I thought it best to accept another clearance. In other words, we don't always accept ATC clearance. If we did, we would probably have airplanes scattered all over the United States.

Q. Did you know that the CAA had investigated that incident of flight 647 and had charged there was a violation of the regulations in flying through that area on that day?

A. I did not. I still do not.

Q. You don't know about that?

A. I do not.

Q. If you had known there was such a thing as that, would you have considered your conduct on that day with respect to flight 647 was at all ontoward?

A. Maybe so and maybe not.

Q. At least it isn't usual to have the CAA charge a violation of the regulations, is it?

A. It isn't usual. Are you telling me there is one?

Q. I don't think that is the best way of getting the evidence in and I will get it in some other way.

A. Pardon me. I am sorry.

Mr. Harlan:

That is all.

Re-Direct Examination.

(By Mr. Bennett):

Q. Mr. Woolley, with respect to this letter of resignation and the intent that you had at the time you signed it, isn't it true that if your conduct subsequent to that date had been such to warrant your dismissal from the Company, you would have expected Mr. Shannon to accept your resignation and you would have gone on your way?

A. That is true.

Q. And when you had your conversation with Mr. Shannon and he told you that if he discovered anything that he thought was not proper, he would call you in and discuss it, wasn't it your idea at that time that if he happened to hear something or find out about something, he could call you in and discuss it, and if it were convincing you done something, that would warrant your dismissal, you would not require any hearing, you would wend your way?

A. That is my understanding that that was the intent of both parties.

Q. And if you were in your own mind guilty of misconduct which would warrant your dismissal, or saying it in another fashion, warrant the Company's acceptance of your resignation, we wouldn't be here, is that your idea?

A. That is true.

Q. I believe you stated, however, that the first intimation you had of difficulty was the notice directed to you that your resignation had been accepted?

A. That is true.

Q. With respect to your letter to Mr. Rickenbacker and the time of your grievance, it is true, is it not, that if one is disciplined or dismissed from the Company, the Employment Agreement requires you to file your grievance within a specified length of time?

A. Quite true.

Q. I think seven or ten days, and it is necessary for you to file your grievance within that period?

A. That is true.

Q. The CAA has charged you with no violation of which you are aware, have they?

A. No.

Q. Has the CAA written you a letter indicating you were in violation of some Civil Aeronautic Regulation or anything of that kind?

A. They have not.

Mr. Bennett:

Nothing further.

I would like to ask you one more question.

Q. Referring once again to the two flights mentioned in Mr. Shannon's letter of February 27, 1956, the first being flight 644 of February 5, 1956, and the second flight 647, February 6, 1956, in your consciousness, did you conduct yourself or the flights, either of these flights, in an unsafe manner?

A. I did not.

Q. And did you conduct either of these flights in a manner which in your opinion would justify your dismissal from the Company?

A. I did not.

Q. Or the acceptance of your resignation?

A. I did not.

Mr. Bennett:

Nothing further.

Re-Cross Examination.

(By Mr. Harlan):

Q. One point of information so that the record will be clear. The letter which you wrote to Captain Rickenbacker was written after you received Mr. Shannon's final decision in this case, is that right?

A. That is true.

Q. You received your reply from Captain Rickenbacker before the appeal was filed to the System Board of Adjustment?

A. I couldn't be positive on that. I will have to check the date on the letters. I am not sure about that.

Mr. Bennett:

Read the question and the answer back to me, please.

(Thereupon the last question and answers were read by the reporter.)

(By Mr. Mr. Harlan):

Q. You don't have the letters with you?

A. No, I didn't think they were of any consequence.

Q. This is what appears to be a photostatic copy of your letter of March 10, 1956, to Captain Rickenbacker. Is that the correct date?

A. If I may at this time, if this is to be used as evidence, I would like to have it read into the record.

Q. All I want is the date. I don't intend to use this as evidence at all.

A. If you want to know I wrote a letter to him, that is a photostatic copy of the letter.

Q. That is the correct date?

A. It must be.

Q. Here is a letter dated March 15, 1956, a copy of a letter from Captain Rickenbacker to you. Does that appear to be a correct copy?

A. I believe that is.

Q. All I care to do is establish the date because Mr. Bennett was referring to the period of time—

A. I don't believe the statement is correct due to the fact that my requset for hearing before the System Board was filed before the date on Captain Rickenbacker's reply.

Q. I believe the date on that, of the appeal is April 3, 1956.

A. I believe you are right.

Mr. Bennett:

Nothing further.

Mr Harlan:

You have no further witnesses?

Mr. Bennett:

No.

(Witness excused.)

Mr. Bennett:

I obviously would reserve the right to rebut whatever evidence of wrongdoing is put into the record. I don't know what it might be.

Mr. Smith:

Is he going to stay around?

Mr. Bennett:

Yes.

Mr. Harlan:

There is no question about your right to rebut, and I stated that earlier in stating my position that you should go first.

The evidence which we will present on behalf of the Company necessarily must be presented by Mr. Shannon because, as you can appreciate from what happened which has already gone into the record, practically all of this was handled directly by Mr. Shannon himself.

That being so, although Mr. Shannon is on the System Board, I am going to ask that he give the necessary facts from the Company's point of view.

Mr. Bennett:

I see no objection to that.

Mr. Harlan:

In accordance with the procedure, I believe Mr. Shannon should be sworn.

Thereupon: SIDNEY L. SHANNON a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Harlan):

Q. State your full name.

A. Sidney L. Shannon.

Q. What is your position with Eastern Air Lines?

A. Senior Vice President.

Q. You are familiar with the subject matter of the grievance which is being heard by the Adjustment Board at this time?

A. I know a good bit about it, yes.

Q. We have already referred to the letter of July 28, 1950 which Mr. Woolley wrote you offering his resignation, and stating in effect you could accept that resignation at any time in the future, should you personally feel that "I am not handling my job in the proper manner?"

A. That is correct.

Q. Will you state, if you know, who wrote that letter?

A. I am not sure who wrote the letter exactly. I know I saw it before Woolley signed it. I am not sure who wrote it.

Q. You didn't write it?

A. I don't think so but I won't say I didn't because I know I had something to do with it.

Q. Who suggested that Mr. Woolley sign such a letter of resignation?

A. I think it has to be gone back a little bit into the situation. As has been brought out here, Woolley had been in several scrapes around during the time he had been with the Company. He had been laid off—I don't remember to what extent without going back completely over the records prior to this time, but for various infractions of the rules more than anything else.

In this particular case he got involved with a situation in Detroit in a take-off and we discharged him. As he has stated in his testimony, he appealed the discharge and, of course, we didn't agree with him because we felt he was wrong. We never compromise on that in the first two hearings. Then it was supposed to go to the System Board of Adjustment and I am sure that the Pilots Association realized that they didn't have a good case, and I will qualify that in this to defend Woolley because I have to state this as a fact.

Mr. Binkei, who was head of the Air Line Pilots Association at the time asked me—I was in New York and he asked me if I could talk to him a little bit about the situation. I met him at the Plymouth Hotel for breakfast one morning.

Mr. Bennett:

Your counsel will know, I am certain, that conversations with Mr. Binkei would not be proper here.

The Witness:

Can I use what I am saying to build up to something where testimony can be put in?

Mr. Bennett:

I am in a very uncomfortable place, Mr. Shannon, in that in proceedings of this kind, there is great latitude permitted witnesses, and your being who you are, it isn't my desire to show you any disrespect. However, I have a problem here and I have to do what I think is proper with it. Your counsel will know, as a matter of law, that conversation with a person who is deceased which bears materially on this case, is not competent and may not be recited into the record, and I am going to have to object to it; that Mr. Binkei called you, you went to New York, and so on, for whatever purpose might be proper, but conversation wouldn't be and I think that the Board should not entertain your recitation of a conversation with Mr. Binkei, because there is no way I can rebut it. I have no doubt it took place but under the law it isn't proper, and I object to it and I don't think the Board should entertain any conversations upon this subject.

Mr. Harlan:

I don't know the refinements of Florida law on the Dead Man's Statute. That is a statute that exists in many states that you cannot use a dead man's statement for some purposes. It varies from state to state. I would think if there is any way you can give the substance of your testimony without referring specifically to what Mr. Binkei said, it would be all right.

Mr. Bennett:

You can't do indirectly what you can't do directly. There are two very substantial objections to such testimony. First of all, I am satisfied in my own mind that a conversation with a person who is deceased is not proper and I think it is objectionable, and I don't think the Board should hear it. It is hearsay. It isn't conversation had in the presence of Mr. Wolley, and I object to it upon that ground. I don't think the testimony would be proper and I object to it. I don't think it should go into the record.

Mr. Shannon:

Can I say something here? You can take it out of the record as far as Binkei is concerned but I would like to say off the record, because it does lead up to something that will come up later on. If I can go off the record for a minute—

Mr. Rivenbark:

Let us interrupt the proceedings and we will get off the record and come back in a minute. Mr. Bennett, can you and Mr. Harlan agree on the ground rule?

Mr. Bennett:

I would be happy to try.

Mr. Harlan:

Why don't we hear what he wants to say and possibly Mr. Bennett will not object.

Mr. Rivenbark:

I don't know what it is, either.

Mr. Bennett:

If you say it on the record or off the record, I don't know what it is. Maybe he wants to tell off the record what Mr. Binkei said, and that would not be proper. He said Mr. Binkei called him and he went to New York.

Mr. Shannon:

I said I was in New York and Mr. Binkei was in New York and called me and asked me to go to breakfast and I did.

Mr. Bennett:

Any conversation is not proper and I object.

Mr. Rivenbark

Do you agree to that?

Mr. Harlan:

Without having an opportunity to study the Florida statutes on this, I would be hesitant to have Mr. Shannon put anything in here which might be prejudicial and I think, conceivably, it is about noon, it might be a good idea to break off for lunch and we can check during the lunch hour.

Mr. Rivenbark:

The Board is of the opinion that since it is lunch time, that possibly we will adjourn for lunch and come back and in the meantime, ask that Mr. Bennett and Mr. Harlan if they can to get together on the ground rules while they are out.

Mr. Harlan:

I think we can work it out.

Mr. Shannon:
It isn't as bad as you think it is.

Mr. Rivenbark:
We will adjourn until one o'clock.

(Thereupon the further hearing in the above entitled cause was recessed until 1:00 o'clock P.M. of the same day.)

After Recess.

(Thereupon the further hearing in the above entitled matter was continued at 1:00 o'clock P.M.)

Mr. Rivenbark:
Let us proceed.

Thereupon, SIDNEY L. SHANNON, a witness of lawful age, having been previously duly sworn, resumed the stand and testified as follows:

Direct Examination (Continued).

(By Mr. Harlan):

Q. Mr. Shannon, will you explain how this letter of resignation dated July 28, 1950, came about?

A. Leaving out some of the preliminaries, I was contacted by Mr. Babbitt and Mr. Wood sometime after Woolley had been discharged, and they were endeavoring to see if there was some way that the disciplinary action could n't be mitigated to a certain degree. Couldn't there be something worked out a little bit lesser than a discharge, and I talked it over with them quite a bit and I

was approached by a few other pilots also who urged me to give some reconsideration to the case due to the fact that Woolley was a fellow who had some age on him, and he had a very nice family and so on, and it was going to put a big hardship on him and his family. I realized that. I am a fellow that has never liked to work a hardship on anybody if I could help it.

At the same time, we have a duty to perform as the Management of Eastern Air Lines, and we cannot condone irresponsible action on the part of anyone, especially someone holding the responsible position as a captain on the Air Lines. After considerable discussion and so on about this, it came about that there weren't very many places to go as far as Woolley was concerned, because he had been disciplined before, and everytime was supposed to be the last time, and there was always another. The last one before this particular incident was, I believe, where he took off on a taxi trip in Albany, Georgia, and he should have been discharged there and we gave him another chance, and gave him another chance here and there and it got to the point where every chance was the last chance, and there weren't anymore chances left. So, with the urging of Jerry Wood and Slim Babbitt, I told them possibly if they could come up with some idea, I would think it over. They came in with the idea that possibly if I make it six months or I don't remember whether it was specified six months or a year or whatever it might be, and I got an iron-clad letter of resignation that I could pick up any time or accept at any time without reservation; would I give Woolley another chance; so after considering the matter—you understand, I wasn't talking to Woolley at all. Wood and Babbitt were more or less what you might say negotiating with me to try to get some point where I could give or I would give Woolley another chance on the line. So after all the assur-

ance and the letter which was worked up, I think I saw the letter—as I said before, before it was sent out I had something to do with how it was made up because I wanted the letter to be what it was purported to be, a bona fide understanding that Woolley would be released from our employ without further recourse by resignation, acceptance of his resignation should it appear the thing to do on my part.

So they called me—"they" meaning Babbitt and Wood called me and said that Woolley had signed the letter and was going to bring it over, and would I talk to him, and I did. He brought it over and I talked to him, and in the conversation he admitted that he had been wrong in this particular instance, which was more or less what you might call a buzzing of the tower at Detroit of this passenger ship which was loaded with passengers because of some whim he had or because he was mad about something. I don't know what. I heard but it would be hearsay and I can't put that in.

Anyhow, he assured me that he had reformed and that I would never have cause and I would never have reason to have to accept his letter, and I told him that as far as I was concerned, that I didn't want grudges against people, that I had nothing against him personally, bygones were bygones, all I asked him to do was to keep his nose clean and I think in the very words "I hope to Christ I never saw him in the office again." That is about the words. He did say he was reformed and going to be a good upstanding citizen and pilot and would conform to all rules and regulations from now on. Also he hoped I wouldn't have to pick up the resignation.

He also did say that he hoped that if I saw him getting off the track, I would call him in and straighten him out. I told him at that time that if I could help him in any way, I would be glad to do so but as far as I was con-

cerned, he was a grown man and I couldn't be a nursemaid to him in that capacity, but I would be glad to help him in any way I could to keep his nose clean.

Therefore I forgot about the matter as far as any further disciplinary action or any ther argument was concerned with Woolley.

Q. Did you have any reason to suppose that Mr. Woolley did not mean all the things he said in this letter of July 28th?

A. As far as I was concerned, it was certainly a very firm statement that everything was—that he appreciated very much the opportunity of stretching the point as far as I had and he hoped that he would be able to live up to his part of the bargain.

Q. Did anyone suggest to you at any time that this lettter didn't mean anything and you could not accept his resignation as it was offered in that letter?

A. Not at the time of acceptance, no.

Q. Did anybody suggest that to you later on?

A. Only since I accepted his resignation, some have said the letter didn't mean too much. It was a lever to hold something over someone's head, but the point that Mr. Bennett was belaboring this morning that you could not take a man's resignation and accept it at your will, but that was not the spirit in which the resignation was given or the idea in mind when Captain Babbitt and Captain Wood, what you might also term negotiated with me regarding this matter.

Q. Wasn't it represented to you that this would simplify the problem if you ever felt that his services should be terminated?

A. That is right, because frankly, as I said previously, I don't think there was any question but that Woolley was completely wrong at the time I laid him off in 1950 or whatever time it was, and it could have been—that is a supposition—I won't say that.

Q. To be real specific about it, Mr. Wooley definitely did not tell you that the letter didn't mean anything and could not be accepted?

A. Absolutely not.

Q. Also specifically Mr. Babbitt and Mr. Wood did not say anything like that?

A. No, sir.

Q. Coming down to the present grievance and the time that you accepted the resignation, would you explain why you decided to accept Mr. Woolley's resignation?

A. I will tell you why I decided to accept it. I was informed by Captain Stone, Director of Flight Operations, that Woolley had run amuck again. I said "what was the trouble?" And he said that one of the fellows who had been flying with Woolley on Flight 644—

Mr. Bennett:

Just a minute. I think it is perfectly proper for you to state why you accepted the resignation when you did and for the reason that someone of your employees—

The Witness:

I have other reasons.

Mr. Bennett:

—informed you that Woolley ran amuck, but I don't think it would be proper unless you know of your own knowledge the "amuck", if you please, or the things that he is supposed to have done unless you have first-hand knowledge of that, but what someone told you about that I don't think is competent and I think your counsel will advise you and I don't think it would be proper to put it in the record by yourself. It is hearsay. You don't know if it is true. Casting no reflections upon anyone who spoke to you, but just as a matter of law and as a matter of

proper procedure, you are not in a position to put into the record what those things were and I object to your testifying about them.

Mr. Harlan:

Let me say this, Mr. Shannon, at this point is explaining why he accepted the resignation.

Mr. Bennett:

He said he accepted it because Woolley ran amuck, and that is as far as he can go.

Mr. Harlan:

I don't think he is limited to that. He is entitled to give the facts which he ascertained about this and the reason why he went ahead and accepted it.

Mr. Bennett:

You mean by information he got from conversations had with other people?

Mr. Harlan:

We will get to it.

Mr. Bennett:

I don't want to spoil the record but you must realize what other people told him is not competent evidence and I don't want the record to be in such a shape that we have evidence in it which is not competent.

Mr. Harlan:

We will see to it that there is competent evidence in the record and there is a great deal of evidence gets into this kind of record which might not be competent.

Mr. Bennett:
Not if I can stop it.

Mr. Harlan:
We had evidence in the hearings we have had up until now which was not competent in a Court of law, and I have always assumed in this kind of a body, we could bring evidence in which would not meet all of the strictest requirements of the rules of evidence.

Mr. Bennett:
There are some fundamental rules which must be recognized. We are playing for keeps and a man's whole future is in the balance, and we should recognize the fundamental rules of evidence. I recognize there is a lot of latitude here, but still and all we should recognize those fundamental rules.

If you insist, I don't know how I could stop you from putting it into the record, but I would save my objection for whomever will finally pass upon this matter in the unhappy event we had to go further.

Mr. Harlan:
Let me suggest that Mr. Shannon be allowed to proceed in this fashion, and if we do not substantiate everything he has said with what you consider to be competent evidence, you reserve your objection.

Mr. Bennett:
It isn't my intention to harass Mr. Shannon. I am not going to jump up and object to everything he has to say. I want the record to be clear that I am objecting to any evidence being placed in this record by Mr. Shannon which was not evidence he knows of his own knowledge and first-hand with respect of anything Mr. Woolley has done

or anything he failed to do which brought about his discharge. With that understanding on the record—

Mr. Harlan:

It is clear that Mr. Shannon could not have first-hand knowledge of all the things that Captain Woolley has been doing because he does not fly around with Mr. Woolley all the time. That being true, all he can do is act on the basis of evidence and the record of the Company and that sort of thing. I think what he is about to say is perfectly proper in the context at this time. We will come up with further evidence to back up the results of his investigation, but all he is saying now is why he decided to accept the resignation.

Mr. Bennett:

There is one further point I want to make certain that I make clear, and that is that the Company has confined itself to two trips. These are the things they have said justified their action against Mr. Woolley, and I think that the cases are clear that the Company having informed us of the incidents which are controlling of his dismissal, they are confined to those, or the Company is confined to those.

Mr. Harlan:

Mr. Shannon was getting ready to testify about those particular incidents. I don't agree he is confined to any such thing. He stated in his letter accepting the resignation that those particular incidents can confirm some other information which came to his attention, and I think that anything which is of the same general type which occurred at approximately the same time, would be legitimate for the purpose of supporting the basis for Mr. Shannon's decision.

Mr. Bennett:
Where are we?

Mr. Harlan:
About where we started, as I am concerned, I am ready for Mr. Shannon to proceed.

Mr. Bennet:
With the understanding that I am objecting to all testimony that he gives that isn't first-hand knowledge and comes to him by hearsay. I don't know how I can stop you.

Mr. Harlan:
I don't agree that the Senior Vice President in charge of Operations has to base a decision in a case like this on first-hand knowledge. I don't think that is feasible.
You have gotten your objection in the record. I suggest that Mr. Shannon go ahead and state the reasons why he acted as he did.

The Witness:
As I started to say, Captain Stone called me and told me about Woolley being more or less off the reservation, so to speak. He told me about what he had been advised by a copilot who was flying with Captain Woolley on those trips, and I told Stone that if he could get it in writing, to get it in writing, that I didn't want any hearsay evidence about a thing like this. I want something down on paper and Stone received a letter from a copilot by the name of W. P. Hughes which stated—

Mr. Bennett:
Just a moment. If the testimony of Mr. Hughes is desired in this record, the only way I know of is for Mr.

Hughes to be here. A man is entitled in situations of this kind, as every citizen, to be confronted by someone who is accusing him of something and he should have an opportunity to examine him, and I object to any evidence going into this record from Mr. Hughes unless he comes here and faces us and says it to our face so that we can cross examine him.

Mr. Harlan:

We have been through this before. All I have asked Mr. Shannon to do up to now is to state on what basis he acted in accepting the resignation.

Mr. Bennett:

And it is perfectly proper to say "because I was informed he went amuck and a copilot told me a story" and he cannot go further in this record. And I think they are sufficient if he thinks they are sufficient but he can't go any further than that, and I am certain you are enough of a lawyer to know what I am saying is correct. If you are going to discharge Mr. Woolley on the basis of what somebody told you, then that evidence is not competent to sustain your case. You have got to have Mr. Hughes here so I can cross examine him.

Mr. Harlan:

We will undertake to have him here but now I want Mr. Shannon to explain why he did what he did.

Mr. Bennett:

He already told us. He told us he did it because a copilot told him things that happened on a trip. I am not going to belabor the point any further. I have my objection. I object to it. I don't think the Board should hear it in this fashion, but if I am overruled on it, I am overruled.

I would ask that the Board pass judgment upon my objection if they will. We have got lawyers on the Board and maybe they would overrule me. I don't know. I hardly think they would. We have two lawyers on the Board.

Mr. Rivenbark:
We will go into an Executive session.

(Thereupon, after a short recess, the hearing proceeding as follows:)

Mr. Rivenbark:
Are you gentlemen ready?

The Board has ruled that Mr. Harlan may continue with his line of questioning only provided that the Company gives positive assurance that Mr. Hughes will be brought in at a later date to tie in with the evidence brought out in the testimony by Mr. Shannon, and that he will be available for cross examination.

Mr. Bennett:
Then I have a suggestion. I would like if possible to have an understanding with counsel on the record that the evidence which frankly Mr. Shannon begins by saying "Mr. Stone told me what a copilot had told him," and frankly, this comes close to rumor rather than evidence, and I would like to have an understanding on the record that the evidence which Mr. Shannon gives with respect to what Mr. Woolley did on this trip, will not be probative of that fact, but it will only go to demonstrate, if you please, why Mr. Shannon discharged Mr. Woolley.
With that understanding, I think we can dispense with any further objection of any kind.

Mr. Harlan:

As I was explaining a while ago, that is exactly what Mr. Shannon is testifying about now. He is giving the reason why he acted as he did.

Mr. Bennett:

It will not be probative of anything Mr. Woolley did, in fact.

Mr. Harlan:

If we do not support this by direct evidence, then it may be disregarded so far as its relationship to proof of what Mr. Woolley did or did not do.

Mr. Bennett:

Okay.

(By Mr. Harlan):

Q. Proceed, Mr. Shannon.

A. I believe where I was when I turned off, I said I had told Mr. Stone to get something in writing and that I didn't want to act on any rumors or things of that sort. I wanted something concrete on paper, and he presented me with a letter addressed to him dated February 16, 1956, signed by W. F. Hughes, a copilot for Eastern Air Lines, and the letter reads as follows:

"Captain F. A. Stone, Superintendent of Flight Operations, Eastern Air Lines, Miami, Florida.

"Dear Captain Stone,

"I would like to bring to your attention a matter which I consider to be of great importance to the safety of flying. It is in regard to Flight 644 of February 5, 1956 and the Captain of that flight, Captain Paul S. Woolley.

"Flight 644 departed Miami for Boston with a scheduled intermediate stop at Washington. On departing Washington our ATC Clearance reads as follows:

Eastern 644 cleared to the Boston Airport G-5 to Dover, direct Coyle, direct Riverhead V-16 Boston, maintain 13,000 feet. When we reported over Dover we were cleared to contact New York Center. We remained on the New York Center frequency until we reported Riverhead, at which time we were cleared to contact the Boston Center approaching Salem.

"On contacting the Boston Center we were cleared to the Boston ILS outer marker via Franklin direct, descend to and maintain 4000 feet. Until we reported over Riverhead and contacted the Boston Center this flight was more or less a routine trip. ' "I have given you a brief history of Flight 644 of February 5, 1956 so that you can put yourself in my position as co-pilot and have some knowledge and understanding of what actually took place from the time we contacted the Boston Center, until the time at which our wheels touched the ground at Boston.' " The Captain was flying the plane and he started the descent at Salem, actually we were a little east of Salem, and by the time we reported Norwich we were so far east that we picked up the Wyoming marker, we also received the Providence ILS outer-marker. We were on flying the Boston Localizer just a little north of Providence.

"I informed the Captain that the was east of course and that he would not receive the Franklin marker. He did not make any correction, so I checked a bearing of 141° from the Gardner OMNI and advised him he was east of the Franklin marker. Our Clearance limit was to the Boston ILS outer marker at 4000 feet. The Captain descended to 3000 feet, (we were on solid instruments)

and crossed the Boston outer marker at 3000 feet, indicating 220 knots airspeed at which time he started a turn to the left (the west side of the localizer), the procedure turn is to the right and and on the east side of the localizer, I reported the outer marker to approach control and they cleared us for an approach.

"The Captain immediately put the plane in a screaming diving, 45° banked turn and descended to 1000 feet. There is a hill and obstruction 840 feet high and to the west of the localizer. The turn was so tight that he completed his 360° turn northeast of the outer marker and never returned to the outer marker to start his approach. He continued his descent still well below the glide path and to the west of the localizer.

"The radar adviser changed to the tower frequency and advised that we were 200 feet below glide path and well to left of localizer and to pull up. The Boston weather was reported 400 feet and limit visibility. At 400 feet and still below glide path and left of course we brought out; at which time I saw the smoke stacks directly in front of us. These stacks are 351 feet high (we were at 400 feet) and to the left of localizer. I reported to the Captain that we were contact and he completed his approach and landing contact.

"After landing the tower asked, "Did you make it?" and the captain told me to tell them "that we like to do it the hard way, anyone can do it the easy way," needless to say I did not relay his remarks.

"During my layover I gave this matter considerable thought; and thought of refusing to fly back to Miami with him, but I changed my mind because the trip was non-stop from Boston to Miami. However the return trip 647 of February 6, 1956 was not without incidence.

"On departing Boston on Flight 647 our clearance read as follows: Easter 647 cleared to the Miami Airport,

V-16 Riverhead direct Coyle, direct Dover, direct Lawerenceville, direct Wilmington, direct Palm Beach, V-159 climb to and maintain 16,000 feet. The Captain was in the rear and I was flying, approaching Azalea when Jacksonville called and advised that Jacksonville ATC reclears Eastern 647 to the Miami Airport from present position direct to Baracuda direct Maytown V-3 Vero Beach V-3W Miami, maintain 16,000. I acknowledged and accepted the clearance.

"Just prior to checking Gateway I heard Flight 629 check Snapper and estimate Palm Beach so when I checked Gateway I asked Jacksonville to check with ATC and find out why they had rerouted Flight 647. Jacksonville advised that the direct route from Snapper to Palm Beach had to be clear by 0630 and that we would not be clear the area by that time. The Captain requested clearance from Gateway direct Vero Beach and Jacksonville ATC advised unable Gateway direct Vero Beach. The Captain told Jacksonville to cancel IFR that he would go DVFR Gateway direct Vero Beach and he estimated Vero Beach at 0630. Jacksonville ATC advised that he would penetrate W-158 going from Gateway direct to Vero Beach.

"The Captain told Jacksonville to advise ATC that if they wanted to be of help, to tell him what time they planned to pull the trigger. That was the end of Communications with Jacksonville. I drew a line direct from Gateway to Vero Beach and igured an estimate at 0636 and advised the Captain, he said his estimate was 0630. At 0630 we were just east of Patrick Air Force Base, but the Captain reported Vero Beach 0630. We were actually over Vero Beach 0637.

"The authenticity of these two incidences can be verified by checking with the Boston Approach Control, Boston Tower, Flight Engineer Jeff Fowler, Jacksonville

radio operators, Captain Dave Schriner on Flight 723/6 and Captain O. E. Taylor on Flight 629/6.

"Captain Stone I have brought these two incidences to your attention because I ame very concerned about my own safety as well as the safety of the passengers that fly Eastern Air Lines. I feel that Cap't. Woolley is a dangerous pilot, irresponsible, and a menace to flying and our profession. I think some corrective action should be taken immediately.

"Sincerely yours,

"W. F. Hughes,

"Co-pilot Eastern Air Lines."

We did some checking on the thing. We checked the Boston Tower and we found out concerning Flight 644 of February 5th, and Boston is not reporting to tower; 644 requested a straight-in landing on four-R, ILS runway, although wind favored runway 33. The request was granted which is not considered unusual. Flight requested to advise tower. Flight failed to contact at this point, but tower was not concerned since there was no other aircraft in the area at this time. Radar operator advised flight he was 200 feet below glide path at three to four miles out. Flight again advised he was 50 feet below glide path. Two miles out flight was advised he was 75 feet below and if runway was not in sight, it was suggested he should pull up. Landing was made out of this approach.

Mr. Harlan:

In other words, in your checking with Boston—

The Witness:

I had our field manager check Boston Tower Chief Operator Lynch there and he supplied us with that information.

(By Mr. Harlan):

Q. That information supports copilot Hughes' report that he was 200 feet below the glide path?

A. It sounds that way to me.

Q. What else did you do to check on 647?

A. We checked our radio logs, Eastern Radio Logs, for the flight from the Jacksonville station, and I have the report here from the chief operator there. I also have the copies here somewhere. I have it written on a piece of paper. They are a matter of public record because we have to keep this information for a certain length of time for the CAA and, as Mr. Harlan said, the CAA asked for an official report on this situation later, all of which we gave to them.

February 10, 1956.

"Flight 647, February 6.

"At 0510 Flight 647 gave us a message for ATC '"We filed Wilmington Direct West Palm Beach Amber to Miami find out if we are going to get through that way."' This message was given to ATC at 0511.

"At 0514 ATC cleared flight 647 from present position direct Baracuda direct Maytown Victor 3 Victor 3 West Miami maintain 16000. This message was delivered to 647 at 0515 and upon receipt of this message 647 says 'Cancel IFR proceed Gateway Vero Beach direct Miami.'

"At 0519 ATC message for E647 advised they show your flight canceled IFR at 18 but for your information your route will take you through warning area 158. Flight 647 upon receipt of this message said 'If it don't close until 0630 will be at West Palm Beach by then but tell them will go Gateway to Snapper to Vero Beach.' This message was delivered to ATC at 0521.

"At 0521 ATC message for E647 advised the missile area is off Patrick and this route will put you directly through the missile flying and also through warning area 158. Flight 647 upon receiving this message at 0522 says 'If they don't start firing before 0630 will be through it.'

"At 0523 ATC message said advise E647 they (meaning ATC) advised missile firing area at Patrick of your route of flight. Flight 647 acknowledged receipt for this message at 0525.

"At 0528 ATC message advised E647 they don't have a line to Patrick they have a teletype message to have the complete area clear by 0630. Flight 647 upon receiving this message says, 'Tell them we be clear out of it by 0630.' This message was delivered to ATC at 0530.

"The radio operators on duty were reluctant to make any statement about the flight 647 February 6 incident, except to say that the incident caused extra messages to be handled.

"Copies of radio contacts with flight 647 February 6 are attached."

The official records are attached.

I have a letter here that came from them dated February 21, 1956. It came from the Civil Aeronautics Administration from Howard E. Habicht. I will quote the letter as follows:

"I was working Sectors 3-4 February 6, 1956, at about 0130 Eastern Standard Time. I called Washington and advised them the missile firing would begin at 0630E and the latest I could accept a Constellation over Wilmington would be $500E. Any flights later than 0500E would be rerouted Wilmington-Barracuda-Maytown-V-3-V-3-W-Miami.

"At about 0230 in the morning or 0300E, I found that the average ground speed in the channel was 230 knots. I called Washington back and advised them that due to the slow ground speed being made southbound, I would request all aircraft Wilmington 0430 or later be rerouted Wilmington-Baracuda-Maytown-V-3-V-3W-Miami.

"Washington originally recleared Eastern 647 Wilmington-Barracuda-Maytown-V3-Vero Beach-V-3W-Miami, and as you can see on the strip, it was given to my assistants that way.

"Eastern 647 was over Wilmington at 0443E, estimating Azalea at 0515. The rest is recorded."

I have a transcript here, it is a transcript between Jacksonville ARTCC for the most part and the Jacksonville Eastern Air Lines Station.

(By Mr. Harlan):

Q. This is the official ATC transcript?

A. Yes, sir, and it gets into the business of this airplane.

"Jacksonville ARTCC: ATC clears Eastern 647 present position direct Barracuda-Maytown-Victor Three Victor Three West-Miami. Maintain sixteen thousand." This is the message that was relayed to Eastern Station and it is acknowledged by AB in our station, and verified from Jacksonville ARTCC at 0514.

"Jacksonville ARTCC to Jacksonville, Eastern 647 Jacksonville, Eastern 647 says that he will cancel his IFR—he will go DVFR Gateway-Vero Beach-Miami.

"Jacksonville ARTCC: He is going DVFR Gateway-

"Jacksonville EAL: Vero Beach-Miami.

"Jacksonville ARTCC: Vero Beach-Miami.

"Jacksonville EAL: Can he do it?

"Jacksonville ARTCC: Advise him that he will be going through the warning area there off-shore, Warning Area 158. I am showing canceling IFR at zero five one seven.

"Jacksonville EAL: Warning Area at what?

"Jacksonville ARTCC: His route is Gateway direct to Vero Beach, he will be going through the Warning Area 158. I am canceling his IFR at zero five one eight Eastern.

"Jacksonville EAL: Okay and he checked Azalea at zero five one five, DVFR, you don't want that though, do you—he has canceled.

"Jacksonville ARTCC: HI, zero five one eight.

"Jacksonville ARTCC: Jacksonville.

"Jacksonville EAL: He said if it suits you any better, he said he would go Gateway-Balsa-Vero Beach.

"Jacksonville ARTCC: Okay, it doesn't bother me at all, we are just trying to protect him—he would be going—the missile firing is at Patrick and Gateway direct to Vero Beach will take him right through the missile firing.

"Jacksonville EAL: Missile firing is where?

"Jacksonville ARTCC: Off of Patrick—and the route of flight Gateway-Vero Beach will take him through the missile firing and will also take him through the warning area—on a direct route—if he is VFR we are just trying—advise him we are just trying to protect him out there.

"Jacksonville EAL: Now—is off Patrick and will take him through the missile firing and also through what?

"Jacksonville ARTCC: Warning Area 158.

"Jacksonville EAL: And this, ah, this, ah, ah, Gateway-Balsa-Vero Beach doesn't help any, huh?

"Jacksonville ARTCC: No, that won't help him at all, just advise him I am canceling his IFR at zero five one eight. HI. Zero five two zero.

"MIA ARTCC: Miami control.

"Jacksonville ARTCC: Eastern Six Four Seven.

"MIA ARTCC: Where is he at?

"Jacksonville ARTCC: Southbound in the channel.

"MIA ARTCC: Oh, go ahead.

"Jacksonville ARTCC: He has been giving us a lot of trouble about this. He has canceled his IFR at zero five one eight and he gave me a route DVFR Gateway-Vero Beach. I advised him it would take him through Warning Area 158 and right through the missle firing and then he gave me another deal Barracuda-Vero Beach and I told him I was canceling his IFR at zero five one eight and we are picking him up on radar here—(Record No. 2/6 0852 RA begins here)—and we are going to hold him as long as we can. What do you know about that on a VFR deal.

"MIA ARTCC: Well, we don't do anything about it.

"Jacksonville ARTCC: You give them to Patrick don't you, as he is going right through their area. He is definitely violating the deal.

"MIA ARTCC: He was going direct Barracuda-Vero Beach, is that what he said at the last?

"Jacksonville ,ARTCC: His original clearance read, Barracuda-Maytown-Victor Three-Vero Beach-Victor Three West-Miami. He canceled, he was DVFR Gateway-Vero Beach. I advised him it would take him through the Warning Area 158 and right through the missile firing and then he said if it would make me feel any better he would go Balsa-Vero Beach. I told him I was canceling his IFR zero five one eight and hung up.

"MIA ARTCC: Okay, we'll tell Patrick about it.

"Jacksonville ARTCC: Okay, you had better advise Patrick.

"MIA ARTCC: Consider him canceling IFR?

"Jacksonville ARTCC: Right.

"MIA ARTCC: JF (sign not too clear)

"Jacksonville EAL: Eastern.

"Jacksonville ARTCC: Advise the pilot of Eastern Six Four Seven that we have advised the missile firing area at Patrick of Eastern Six Four Seven's route of flight.

"Jacksonville EAL: Okay.

"Jacksonville ARTCC: Due to the fact that he will be going right through the missle firing area.

"Jacksonville EAL: He said, well I'll be through there at zero six three zero; he said, isn't that the time it's closing and I told him that I was under the impression that they closed that prior to in order to clear that channel; you know, so there wouldn't be anybody in there right at the time they opened and he said well he sure thanks you for the information but he would be clear there by six-thirty.

"Jacksonville ARTCC: Okay, HI. Zero five two six.

"Jacksonville ARTCC: Jacksonville.

"Jacksonville EAL: Oh, did, ah, did those guys down there say or do you know what time they plan to start firing them missiles, or could you ask them for this guy.

"Jacksonville ARTCC: We don't have any line to Patrick at all, we just go by what we have here on the teletype and they advised to have the complete area clear by zero six three zero Eastern. In other words, no just passing by Patrick but that is the complete area down there clear by zero six three zero Eastern. And we had it worked out that Eastern Six Two Nine was the last one to go through on estimate.

"Jacksonville EAL. Okay, thank you.

"Jacksonville ARTCC: HI. Zero five two seven.

"Jacksonville ARTCC: Control.

"Jacksonville EAL: Eastern Six Four Seven said to tell you he would be clear of that area by zero six three zero Eastern.

"Jacksonville ARTCC: Hi. Zero five three zero." That is all of that.

Q. Mr. Hughes' letter stated that actually at six-thirty they were East of Patrick Air Force Base and they did not get to Vero Beach until six thirty seven. Did you do anything to verify that?

A. I got the checker back and found a copy of the log that has Woolley's signature on it. It shows they went over Vero Beach at six three seven. They were estimating Vero Beach at zero six three zero and it actually shows they were over Vero Beach at six thirty seven, Palm Beach at zero six four nine and over Miami at zero seven zero three.

Q. Did you find out what radio contact Mr. Woolley gave as to when he was off Vero Beach?

A. That is a message, the following are excerpts from the continuous log covering communications with Eastern Flight 647 dated February 6, 1956, recording times are G.M.T., time Eastern 647 was over Vero Beach at zero six thirty; Bell Glade at zero six five 0. That was the message he got on that. There was another message. That was filed at Greenwich time eleven thirty.

Q. Zero six thirty Eastern time?

A. I suppose so, I presume so. Eastern 647, find out if Eastern 750 will be on time. Have two Vero Beach. That is part of the record. Another one Eastern at Bell Glade at 49, Miami at 03305.

Q. In his radio contact he reported he was at Vero Beach at 0630, but on the official flight log which he signed, he says he was there at 0637 which is what the copilot reported?

A. Naturally, as I said, when I saw the letter that we had, that Stone called me about, I told them to check up on all of this because I wanted to know what the score had been and to find out about any discrepancies we had concerning any troubles we had with Woolley back since I had the—since the last six or eight months so I could see whether this has been a progressive thing or impulse or what.

I find a memo in the file from L. H. Dice dated June 8, 1955 addressed to Captain G. C. Diggs.

"On June 2nd, 1955, while riding the jump seat on Flight 711 from Detroit through Columbus to Charlotte, I observed, among other irregularities, that the Captain, P. S. Woolley, stopped both the #1 and #4 engines of Super C Constellation #229 while taxing to the passenger terminal at Columbus, Ohio.

"After the copilot and flight engineer vacated the flight deck, I discussed the irregularities with Captain Woolley, particularly the matter of stopping the #4 engine.

"It is my opinion that Captain Woolley has no intention to conform with the standard procedure of stopping only the #1 engine.

"L. H. Dice."

Mr. Bennett:

On what date was the incident?

The Witness:

June 2, 1955. "While riding the jump seat on Flight 711." That did not come to my attention until I started digging back into this in February.

I have another letter here from—addressed to, I believe, handed to, so I am told, it was handed to Captain Diggs, but with the request that he not do anything official about it, although he probably talked to Woolley about it because he wanted to see if the ALPA could straighten it out. That is what I am told from Captain Stone's office but this letter is from a copilot by the name of R. G. Burstrom.

"Subject: Safety.

"I am writing this letter to record a series of events on this flight which are considered by me to be in complete disregard of all the standards, ideals and skill upon which airline piloting is based.

"This flight was #702 on June 13. 1955. The crew consisted of Captain Paul S. Woolley, myself and Flight Engineer Jack Polcyn. Departure out of Miami was VFR and climb out was made by the captain through cloud layers on instruments for over two thousand feet without benefit of IFR flight plan, to a crusinig altitude of 9,000 feet, which put us on top of the clouds.

"Descent from 9,000 feet in to Orlando was started pretty late. Descent was made at maximum cruise power setting with the result that the indicated airspeed was always in excess of 235 knots and finally over the red line speed and off the indicator scale. Weather condition during descent was typical cumulus conditions with a light chop at lower altitudes where the indicated airspeed was greatest. Descent was made through clouds although VFR.

"The tower cleared us to land when approximately over the outer marker and at this point, it was finally obvious to the captain that we were too fast. Power was snatched (and I do mean snatched) off and flaps were lowered at 210 indicated and the gear was lowered at 180. Approach flaps and landing flaps were also lowered well in excess of the limitations specified. Well, we made it—whew! ! !

"The next leg between Orlando and Jacksonville was made by me. At Jacksonville, we taxied away from the ramp on ground control with a lively bit of byplay going on, on the radio, between the stewardess and the tower boys. We were cleared to runway #23, wind SW at 20 knots, however the captain chose runway #12, so out we go to runway #12. The tower cleared the stewardess to take off, . . ."

Captain Woolley verified this in a conversation I had with him.

". . . The tower cleared the stewardess to take off, so the throttles were snapped into position and away we went. We started out on the right hand side of the runway, but it became obvious that we're drifting so fast that the plane had to be pulled off the ground or leave the runway on the left side, so we pulled. At the same time he yelled for gear up, but I didn't think we were flying yet, so I waited until the speed said we could be, and then I pulled the gear up. By the time my hand came off the gear lever, we were starting a Chandelle to the left which resulted in a 50° bank, which was started below 100 feet and reached its ultimate of 250 feet, with the airspeed during the whole maneuver finally working its way to 140 knots, at which point, we levelled off and shot towards Atlanta. After this per-

formance was over, the captain remembered that we had neglected to get our IFR, which was previously filed so we go over VFR (?) again.

"We get on top VFR and high-ball it for Atlanta.

"Coming into Atlanta, we let down through marginal VFR weather at maximum plus speed again, to discover a Delta Convair ahead and below us in the vicinity of Jonesboro. (I think it was Delta Flight #42 or #442.) The captain proceeds to zero in on this plane and finally passes him to his (Delta's) right, about 150 feet away. We are close to Jonesboro, so I switched to tower frequency to check, when Delta checks Jonesboro and wants to know, "Who that Eastern ship was that came dangerously close to us?" Before I have a chance to say a thing, the captain has the mike in his hand and is shouting at Delta, "Whadda you mean dangerously close, we weren't even near you. If you want to make something out it , this is 702. Go ahead, make something out of it," etc. Finally, the tower breaks it up by saying "boys, boys, let's be friends" etc. and assigns up a postion #2 behind our trip #182 and gives Delta #3 position. We are still descending at and beyond the maximum and #182 is about 1 mile away and turning final approach for runway #27. Again he snatches the throttle all the way closed, the flaps come down at 200 knots this time and the gear at 180 knots. We are still overrunning #182 so he pulls to the right of runway #27 and begins to parrallel the approach to it. He finally picks up the mike and asks for #21 and plans an approach to it. The tower then asks Delta if he is willing to follow us in on 21 instead of 27 and he says yes. Meanwhile #182 is still coming down the final approach for #27 so he can't clear us to land on #21. We continue on in and immediately before we hit, the tower clears us to land and Delta follows us in.

"The rest of the northbound trip was normal.

"Signed R. G. Burstrom."

That is about all I have got here. I want to say this, that when I started to check into this thing and got this information, at the first meeting or it might have been the second meeting I had with Woolley when Stone and George Smith were present, I confronted him with some of these details about the stewardess at Jacksonville and the other deal there, wher he was flying a little high, wide and handsome on one of those trips, and he more or less admitted he had done some of this, but he had also said he realized his mistake shortly thereafter and had reformed again, so apparently he reforms every now and then, and then he has these lapses. Of course, the last lapse was the one that more or less caused me to take the action which I did in regard to accepting—I figured there was no use in fooling with the thing after all this, and I said the only thing to do is accept the resignation.

He gave it to me in good faith and I have given him a chance. I have let him stay here for five years. He behaved himself for quite a long time. I can hear things about all of you fellows but you don't hear everything until it gets serious.

We are playing for keeps in this business and we can't have somebody going around pulling these crazy stunts. The fellow apparentlly can fly good and I think he has flown good. There is no question about his being able to fly an airplane. I told him that myself but he does not have to prove it by going into pursuit tactics to prove he can fly.

As far as I am concerned, I feel I was perfectly justified in accepting his resignation. You will recall in the letter of resignation, it was left up to me to decide,

whether the resignation should be accepted and I didn't go out looking for something to pin on him. I never went out hunting for anything to pin on him. I had nothing against him then, nor do I now. The only thing I have is a responsibility involving the safety of the people in the airplane. That is the reason that the resignation was accepted.

(By Mr. Harlan):

Q. I gather that you concluded as a result of your investigation, that Mr. Woolley was an unsafe pilot?

The Witness:

That is right, not that he couldn't fly an airplane, but he wouldn't fly it like he should.

(By Mr. Harlan):

Q. If you had not had the letter of resignation in your possession, would you have felt you had sufficient grounds for discharging Mr. Woolley?

A. Yes.

Q. Would you have discharged him?

A. I think so, yes, especially after I got to digging into it and I found out all the things involved. I frankly, instead of going out and discharging the fellow—I had been through this a lot of times with the same man, not this kind of proceeding but the business of being practically fired and given another chance. That was the reason that I couldn't do anything. I couldn't give him any further leeway.

I felt that way in 1950, but due to the urging on the part of ALPA officials, Babbitt and Wood and others, that I don't need to mention, we gave him another chance with the honest and sincere understanding on the part of both Wood and Babbit. I am sure they were sincere

at that time and I am sure they would say so now, because they assured me they were sincere and that Woolley should consider if I picked up the resignation or accepted it, Woolley unuderstood he would have no further recourse.

I think that all of this investigation and hearing, while it may be necessary, I try to keep from bringing out all of this stuff we have had to mention here because it does not do Woolley any good to have to go through a recitation like this for his future, and it isn't good for the pilot's profession to have this spread around, or the Company.

Mr. Harlan:

That is all.

Cross Examination.

(By Mr. Bennett):

Q. You are not aware of any action taken by the CAA on this letter?

A. They asked me for the information.

Q. And you gave it to them?

A. We gave them the information. I will have to answer it this way. Let me read the letter. It is an official letter.

Q. Is this the letter you received prior to your requesting the information?

A. It is dated February 20th.

Q. This was the letter that requested the information?

A. Yes.

Q. I have no objection to your reading it.

A. I will read it. It was addressed to us, attention of George H. Roerig, my assistant.

"Gentlemen:

"Information before us indicate that your Flight 647 of February 6, 1956 knowingly operated between Gateway Intersection and Miami over routings which violated one or more active Danger Area, specifically W-158 and W-497A. Such operation is considered contrary to Civil Air Regulations.

"In order that we may fully determine the factualness of this information we request that you forward the following:

"1. A copy of the flight plan and flight log (Form 100) for Flight 647.

"2. A transcript of all company radio contacts with the flight from Wilmington, N. C. to Miami and any additional contacts you feel are pertinent.

"3. The name of the Captain, his address, age, certificate number and ratings.

"4. Any statement the Captain deems appropriate.

"5. Names of other flight crew members." The other members were W. R. Hughes, Jeff M. Fowler, Joan Kwapich and Jean Vince.

"6. Any statement Eastern Airlines cares to submit regarding the conduct of the flight.

"Your prompt attention will be appreciated.
"Signed Robert C. Hutton, Aviation Safety Agent."

Q. My question was the information was furnished?

A. It was furnished but we would know nothing about anything that happened.

Q. You know of no charge that has come out of that?

A. Because Woolley was no longer employed by us and, I understand, however, due to the fact that he was discharged the situation was dropped, but that is purely unofficial. That is pure hearsay. That is what I understood from plain, pure unadulterated hearsay.

Q. In your previous testimony, I believe you stated—this was in the very first part of your testimony and I wanted to make certain I understood you—at the time Mr. Woolley was discharged in 1950, that the Air Line Pilots Association had realized that Woolley didn't have a good case, or something of the kind?

A. You wouldn't let me put Mr. Binkei's statement in. I can clarify it but—

Q. I will withdraw the question.

A. The other gentlemen know what I was talking about, or they would not have been negotiating to the extent they were.

Q. At the time you accepted this letter of resignation, Mr. Shannon, you were not informed in any regard that such a letter might no be legally proper or might not be legally sufficient to warrant or to permit you to discharge him summarily?

A. No, as far as I was concerned, I heard some people say the letters are questionable since then, that there has been some question about it. You brought it up this morning.

Q. You had never heard that at the time you accepted the resignation?

A. No. I thought I had a perfectly legitimate document. I was accepting the man's resignation and he would get himself cleaned up as far as paperwork, and God knows, I had wished him well and God speed, be-

cause I had enough trouble with him over the years, even though it was always of his own making.

Q. Had anybody in the Company talked to Mr. Woolley or informed him about this letter which you found in his file under date of June 8, 1955 of a certain engine incident occurring on June 2nd? Was Mr. Woolley informed about that?

A. Which one are you talking about

Q. In your testimony you said that subsequent to the incident which brought about your acceptance of his resignation, you reviewed his file and found a memorandum in his file of June 8, 1955, the letter from Mr. Dice?

A. Yes. I don't know anything about that. I knew nothing about any of this stuff until it came up in February because nobody said anything to me about it.

Q. Including the letter from Mr. Burstrom?

A. I had never seen that until this came up. I might say I had heard from rumblings around that there was something wrong about the first of the year but nothing concrete, just gossip, and I asked Stone if there was anything going on concerning Woolley and he didn't know anything current at the time.

Q. The first information you had on this, or the whole fiasco came from Mr. Stone?

A. That is right.

Q. Can you tell us the date upon which he first brought this matter to your attention?

A. It was about the time that I got this letter.

Q. On the same date?

A. No, I don't know. It probably wasn't the same date. I don't know. It might have been within a week of that date; I don't remember.

Q. The letter you have reference to was the one of Mr. Hughes?

A. Yes.

Q. The letter is dated February 16, 1956?

A. It was just prior to that he talked to me about it. Maybe it is the same time. I know he talked to Hughes before he had the letter. Hughes waited for him to come through to tell him about it.

Q. It would be a few days prior to February 16th?

A. It could be, yes. The incident happened what day?

Q. February 5, 1956.

A. Yes, it could be.

Mr. Bennett:

Nothing further.

Mr. Harlan:

That is all I have from Mr. Shannon.

Mr. Tedlock:

In regard to this form you had which was Eastern Flight Form No. 100 which is the flight log which gives the reporting, I wanted to get the speeds? Did they enter the ground speeds?

The Witness:

Here it is.

Mr. Tedlock:

From Wilmington on down it was 225 knots.

That is all I have.

Mr. Smith:

I have nothing.

Mr. Riverbark:
I don't have anything.

(Witness exceused.)

Thereupon: WATSON T. BABBITT, a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Harlan):
Q. Please state your name.
A. Watson T. Babbitt.
Q. You are captain with Eastern Air Lines?
A. Yes, sir.
Q. You have heard Mr. Shannon testify about how the letter of resignation by Mr. Woolley dated July 28, 1950, came into existence?
A. Yes, sir.
Q. Is Mr. Shannon's report of that substantially accurate?
A. The only part, there is a question in my mind as to who wrote the letter. I believe it is correct that Captain Woolley said he didn't write it and Mr. Shannon said he didn't write it.

Mr. Shannon:
I said I might have written it. I don't remember but I know we talked about the letter before Wooley signed it.

The Witness:
That is the one thing I want to make clear, that we collaborated on it.

Mr. Shannon:
My secretary wrote it.

(By Mr. Harlan):
Q. Did you ever tell Mr. Woolley that this letter didn't mean anything?
A. No.
Q. That it had no effect?
A. No.
Q. Did you intend it would mean something, that the Company could accept the resignation?
A. I honestly felt that the letter was obtained under just the conditions that Mr. Shannon stated. It was a negotiated deal and was part of a negotiation and we hoped to save Paul's job with the letter. That is the spirit I had in it.
Q. There was no intent on your part that the letter would not be effective?
A. No. sir. We did ask Mr. Shannon not to use the letter two days after we got out of there and fire him.

Mr. Shannon:
I gave him five years.

Mr. Harlan:
That is all.

Cross Examination.

(By Mr. Bennett):
Q. I take it that the expectation, of you at least, in negotiating this resignation is that Mr. Shannon would have substantial reasons at a time that he exercised the resignation?
A. That is right.

Q. And that it was to be used at a time, if unhappily that time came, that Mr. Woolley was guilty of some infraction which would justify his dismissal?

A. That is right.

Mr. Bennett:

Nothing further.

Re-Direct Examination.

(By Mr. Harlan):

Q. You didn't mean that the resignation should not be accepted except in a case which would justify dismissal, did you?

Mr. Bennett:

I don't understand that.

(By Mr. Harlan):

Q. You feel that this letter could be used by Mr. Shannon only in a situation where Mr. Shannon would be fully justified in discharging Mr. Woolley, and could make it stick all the way through the grievances procedures and the System Board of Adjustment?

A. I don't know how to answer it. I think I answered it. As I understood the intent of it was that that Mr. Shannon would have a justifiable reason. However, I wouldn't say there wasn't any intent that he would have to have a hearing. He could use it but we did put provisions we discussed orally that we did not want Mr. Shannon to abuse it. In other words, not to double-cross us after the time limit was gone and take out the letter.

Q. You assume Mr. Shannon would have good reason if he accepted the resignation?

A. That is correct.

Q. You did not intend he should have to go through the grievance procedure and the System Board of Adjustment to make it stick?

A. No, I don't believe I did.

Q. What you mean was what the letter said, that Mr. Shannon could accept the resignation at any time in the future should he personally feel that Mr. Woolley was not handling his job in the proper manner?

A. That was the intent.

Mr. Harlan:

Nothing further.

Mr. Bennett:

Nothing further.

(Witness excused.)

Thereupon: JEROME E. WOOD, a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Harlan):

Q. State your full name.

A. Captain Jerome E. Wood.

Q. Are you a captain with Eastern Air Lines?

A. That is right.

Q. You have heard the report which Mr. Shannon gave of the circumstances under which Mr. Woolley's letter or resignation, dated July 28, 1950, came into existence?

A. I have.

Q. Is that report substantially accurate?

A. It is.

Q. Did you ever tell Mr. Woolley that the letter of resignation didn't mean anything?

A. No, I never did.

Q. Did you intend it would be effective as it was written?

A. That was the understanding at the time, yes.

Q. You have heard Captain Babbitt's testimony on that subject?

A. Yes.

Q. Would you support what he did on the subject?

A. That is right.

Mr. Harlan:

That is all.

Cross Examination.

(By Mr. Bennett):

Q. You expected this resignation to be exercised by Mr. Shannon if he, in his own mind, had sufficient grounds to warrant Mr. Woolley's severance from the Company; was that substantially what was in your mind at the time this resignation was handed in?

A. At the time the letter was obtained, I believe I specifically asked Mr. Shannon—requested assurance that the letter would not be used in an arbitrary or capricious manner. He would have reasonable, justifiable cause and once he had control—

Q. Substantial grounds for dismissal?

A. That is right.

Q. Under those circumstances and if the substantial grounds were present, you and Mr. Babbitt and, I pre-

sume Mr. Woolley, concluded there would be no hearing and there would be no System Board decision or anything of the kind, Mr. Woolley would go his way?

A. That is right.

Mr. Bennett:
Nothing further.

Re-Direct Examination.

(By Mr. Harlan):

Q. You heard my re-direct examination of Captain Babbitt. Do you agree with the position he took on that?

A. I don't recall what Captain Babbitt said. I would like to have it refreshed.

Q. In any event, you did not have in mind with this letter that it would be necessary for the Company to go through a grievance hearing, and then the System Board of Adjustment hearing in order to make an acceptance of the resignation stick, did you?

A. At the time the letter was signed, I didn't know it could be opened to question. If we agreed to anything that was illegal or prejudice the man's rights, we did it unknowingly.

Q. You assumed that Mr. Shannon would not act without good reason?

A. That is right.

Q. When he did act, that would be the end of it?

A. That was the understanding at the time.

Mr. Harlan:
Thank you. That is all.

Mr. Bennett:
Nothing further.

(Witness excused.)

Thereupon: ROBERT GUNNARD BURSTROM a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Harlan):

Q. State your full name.

A. Robert Gunnard Burstrom.

Q. What is your position with Eastern Air Lines?

A. A captain.

Q. Your are a captain now?

A. Yes.

Q. Where are you based?

A. Miami.

Q. Were you here when Mr. Shannon read a memorandum which purported to have beaen signed by you?

A. I was.

Q. I show you now an inner-office memorandum, Eastern Air Lines, memorandum from R. G. Burstrom to "To Whom It May Concern," on the subject of safety. It is signed R. G. Burstrom. It has a date stamped on it and says "February 29th, received". I understand from what Mr. Shannon said, that is the time it was received in his office. Otherwise, it is undated. I would like to ask you, is that the memorandum which you wrote?

Mr. Bennett:

I object to the introduction of this incident as grounds for his supporting the discharge in any regard, and my reason for it is that the Air Line Pilots Association contract provides specifically when a man is discharged, he is to be furnished with a letter indicating to him the specific charges with which he is to be confronted, and the Company in this case, when they presented Mr. Woolley with thes sepcific charges, indicated to him in the letter of Mr. Shannon and I read:

"For your information, my action in accepting your resignation was based in large part on the unsafe flying of Flight 644 of February 5, 1956 enroute into Boston, and your handling of Flight 647 of February 6, 1956 enroute into Miami."

Those are the specifics. Those are the things we come here to answer and the arbitration cases are clear upon the point, that when a Company has informed an employee that he is charged specifically with certain infractions, they are confined to those infractions.

Counsel may say there is other language in here that in some vague way indicates that there might be some other things, but there is no specific and the specific things which we are called upon to answer are for these two flights, and I object to any evidence going into the record of some other or different incident.

Mr. Harlan:

The sentence from Mr. Shannon's letter which you didn't read: "Your conduct in handling those flights confirms other information which has come to my attention from time to time."

Mr. Shannon also said he talked to Mr. Woolley about it at the conferences which they had and Mr. Woolley admitted some of the facts in that particular memorandum. I think Mr. Shannon made it quite clear in his testimony why this sort of thing was looked into. It is for the purpose of showing he did look into other circumstances to be sure that these incidents, the specific incidents on which the acceptance of the resignation were based, were not simply casual abberations or anything like that, but represented a true characterization of Mr. Woolley, and I think in that respect this type of information is pertinent.

In any event, I would not like it to be left unsupported on the record. Mr. Shannon told what he based his acceptance of the resignation on and this is one of the items. Mr. Burstrom happened to be here and we asked him to testify that that was a true statement of what happened. Whether or not the Adjustment Board is going to consider this in supporting Mr. Shannon's action, I think that the fact should be fully before the Board at this time.

Mr. Bennett:

I think the Board should give us a ruling.

There is another objection which I haven't made. It is highly questionable where an individual in Mr. Woolley's situation has paid for his past crimes, so to speak. I think the cases are pretty clear that he starts off with a clean slate and these things were never brought to Mr. Woolley's attention. He was not confronted with these matters. They couldn't have been of any consequence, otherwise he would have been.

My objection is of evidence in this record except the two incidences respecting the flights because the Company has confined itself to those incidences as being the

grounds upon which this discharge case is based. I think the Board should give us a ruling upon the objection and then we will abide by it.

Mr. Smith:

I would like to find out about your position. I understood you previously were objecting because of some of this testimony was hearsay and you wanted the direct testimony.

Mr. Bennett:

In support of the flights or the incidences upon which the Company is relying. As I understood the testimony and by stipulation on the record that Mr. Shannon has given us his reasons for having the resignation or discharge of Mr. Woolley, but the things that he was informed about were of no consequences as far as I am concerned. He told us why he discharged him but as far as the record, they don't stand proved on the record.

Mr. Smith:

I understand that your general position is that the letter of resignation was oa a letter of resignation and that the Company could not accept it. But assuming that there was a letter of resignation to accept, as is the Company's position, and that the Company has a right to show it has good reason for doing it, is that not pertinent testimony on that point?

Mr. Bennett:

I think not because the reasons for the acceptance, if you please, and the reason for his discharge, if there is no acceptances or if there is no resignation involved here, the reason for his discharge, the Company confined itself to 647 and 644.

Now they come in and say there was a lot of incidences and here is one they want to put in. Cases are clear, once an employee and particularly is this true where the contract itself specifically provides a man prior to a hearing will be informed of the specific charges against him, once the Company set out specific charges then they are not at liberty to go outside of that. There are cases on that. If you desire citations, I will be glad to give them to you.

Mr. Harlan:

I object to your characterization of what the contract says your characterization of the charges that were made. The contract says nothing in this section shall be construed to prevent the Company from holding a pilot out of service prior to written notification of charges preferred against him, and such written notification stipulated in paragraph A-1 of this section, shall be furnished the pilot with expeditiousness not exceeding seven days. It does not say that charges have to be specific. You say you have to give him written notification of charges. Here the charges included some pretty specific ones. It said "unsafe flying . . ."—"For your information, my action in accepting your resignation was based in large part on the unsafe flying of Flight 644 of February 5, 1956 enroute into Boston, and your handling of Flight 647 of February 6, 1956 enroute into Miami." He said it was based "in large part." The basic charge is "unsafe flying." "Your conduct of handling those flights confirms other information which has come to my attention from time to time."

We have given the man an adequate opportunity to answer the charges made. We have given him a statement of what the charges are. The specific charge is unsafe flying, in large part of 644 and 647. He has been

on notice about this other incident since the first conference on the subject, and I submit there is nothing in the contract that prevents our going into that, for the purpose we are going into it here, which is to show it is not an isolated instance.

Mr. Bennett:

The contract does require a specific charge.

"Section 29.4 Prior to such investigation and hearing, the Company shall furnish such pilot a copy of the precise charge or charges against him, and he shall not be required to give testimony or furnish evidence prior to the actual time of the investigation and hearing."

Mr. Harlan:

The precise charge is unsafe flying. We have specified particular flights.

Mr. Bennett:

I won't belabor the point. I make it for the record and I can support with cases that when a man is charged specifically, the Company cannot wander all over the landscape in trying to support it. They are confined to the charges as they have been made.

I might say, if Mr. Harlan's idea is to be this, not for the purpose of sustaining the discharge but only for the purpose of showing why Mr. Shannon accepted the resignation, and I think that was the point upon which you were getting at, whether he did it rightfully or wrongfully is of no consequence, if he wants to put it in for that purpose only, I don't think it will help him, but I would withdraw my objection on that score but it will not go in any regard to sustain the discharge of Mr. Woolley if, in fact, he was discharged rather than having resigned, which is my contention.

Mr. Harlan:

I am putting it in for both purposes, one to show why Mr. Shannon did what he did in accepting the resignation; and two, for the purpose of showing that this is not an isolated instance, and that the unsafe flying on these two specific occasions fwas characteristic. If the Adjustment Board does not want to consider it for both purposes, it is up to them.

Mr. Bennett:

I might say, if you desire citations upon the point, you can find two of them in Arbitration Reports at page 117 and 244. In both of those instances, the arbitrators have held that the Company in a dispute on a discharge of an employee, the employer must justify the discharge by the reasons given on the discharge slip, and he may not add other reasons for the discharge when the matter comes to a hearing, the Company having the obligation to specify the reason for the discharge and having done so, I think they are at this time stopped from going outside.

Mr. Harlan:

I may have read those but I wouldn't be able to identify them from your description, but I have read a number of cases on this particular subject and there are some that say one thing and others that say another. It depends on the facts of the case and the contract. If the contract said you must specify the charges and can't bring up anything else, maybe that would be so. I have read a number of cases which say you can consider a man's general record and background and so forth, in determining how significant the particular incidences are and what weight should be given to those incidences. I don't think that

any arbitrator in the country will tell you anything different.

Mr. Rivenbark:

We will take a five minute recess.

(After a five minute recess, the hearing was resumed as follows:)

Mr. Rivenbark:

The Board will rule that the testimony of Captain Burstrom is admissible only as it is probative of Mr. Shannon's motives in accepting Captain Woolley's resignatiion. It will rule upon the competence of Captain Burstrom's testimony as probative of sufficient evidence for discharge if that question arises and it will request citations of authority from counsel at that time.

(By Mr. Harlan):

Q. Mr. Burstrom, is that a true and correct copy, or is that the original of the memorandum which you wrote?

A. It looks like it and that is my signature.

Mr. Harlan:

Possibly it would be as well to have marked for the record a copy of the memorandum. I would like to have that marked as Company's Exhibit No. 1.

(By Mr. Harlan):

Q. I noted in the third paragraph as this memorandum was typed, it said 260 knots, and someone changed that in ink to read 235 knots.

A. I believe I did that.

Q. That was a typographical error which you corrected?

A. Yes.

Q. Would you state to whom you gave that memorandum?

A. I gave one copy to George Diggs, Chief Pilot, and Ray Rupprecht.

Q. Did you request that memorandum not be immediately released?

A. Yes, to Mr. Diggs and he said he would hang on to it until I said he could use it.

Q. When did you tell him he could use it?

A. Months later because—I don't know what time it was, it must have been about, as near as I can figure out, about October.

Q. When approximately did you write this memorandum?

A. I wrote it over three or four weeks after the flight and that would be along about—

Q. Early July?

A. Early July, yes.

Q. You gave it to Captain Diggs immediately after that?

A. I gave Captain Diggs a copy and Captain Rupprecht a copy.

Q. Immediately?

A. After I had finished the letter, yes, with the understanding nothing was to be done about it and I could pick it up anytime I wanted to: It wasn't going to go further unless I said it could.

Q. Does this memorandum correctly set forth the facts on trip 702 of June 13, 1955?

A. Yes, sir, this trip, these are the facts of the trip.

Q. That is an accurate statement of what occurred on that portion of the trip?

A. That is right.

Q. You were copilot at the time?
A. That is right.

Mr. Harlan:
That is all.

Cross Examination.

(By Mr. Bennett):
Q. When did you come to work for Eastern?
A. February 3, 1946.
Q. How many times have you flown with Mr. Woolley?
A. We flew together off and on for the first two years I was with the Company, and how many flights—
Q. No, during the first two years.
A. Yes, rather frequently up to Atlanta.
Q. After the first two years?
A. After the first two years I didn't fly with Paul for—it was a long time. I would say maybe I had one or two trips with him in between 1948 and 1949 up until last year.
Q. This flight occurred June 13, 1955?
A. That is right.
Q. How long previous to that time had you flown with Mr. Woolley?
A. I don't know but is was a good many years.
Q. This was the first flight you had with him for a number of years?
A. That is right.
Q. Were you acquainted with Mr. Wooley's reputation around?
A. Not particularly, anymore than anybody else.
Q. That is what I want to find out. What was somebody else's and your acquaintance with his reputation, if he had a reputation?

A. It is all hearsay, as far as I am concerned.

Q. What was the hearsay you heard about him?

A. I don't usually go around repeating hearsay. It does not have any bearing, I guess.

Q. Maybe you think it does not but maybe I have a different idea. What was the hearsay that you heard around with respect to Mr. Woolley? I didn't ask you who told you but what was it you heard?

A. I heard he was hard to get along with. As far as I was concerned, we always got along real fine, but personalities what they are, we all don't get along with the same people.

Q. What else did you hear with respect to him and what impressions did you get from around among the pilots of Eastern Air Lines, if anything?

A. I heard he disregarded certain regulations and whatnot that were supposed to be done.

Q. How often did you hear this kind of thing about Mr. Woolley?

A. I don't know how often; just like you hear about anybody else at the airport. You come in off a flight and a group of guys is standing around talking and you pick up all sorts of things. You don't know whether they are true until you evaluate them.

Q. I take it that the information that you had with respect to Mr. Woolley was picked up in just the fashion that you indicated, a group of pilots get together and talk about this person and that person. Isn't it true that in your conversation with groups of pilots as days and weeks and months go by on Eastern Air Lines, that Mr. Wooley was the subject of conversation as much as anybody else, is that right?

A. As much as anybody else, yes.

Q. You formed a very decided opinion about him in your own mind before you would get in the cockpit with him?

A. No.

Q. You don't believe any of those things?

A. Yes, I would believe a lot of things, but I had no opinion of Paul. My opinion of Paul has always been relatively good.

Q. You like him?

A. Yes.

Q. You were as anxious to fly with him as anybody else?

A. No, you are getting into a different department there. A fellow on the ground is one fellow and flying an airplane is another thing. I was as anxious to fly with him as anybody else up until this.

Q. Previous to this time you had no compunction flying with Mr. Woolley?

A. No.

Q. You heard all manner of things about his manner of operation?

A. Yes.

Q. But you still hadn't formed any opinion with respect to it?

A. No.

Q. You didn't have any compunction about flying with him?

A. No, none at all.

Q. I think you stated, did you say that Mr. Woolley was the subject of conversation among the copilots when the copilots gathered, as much as practically any one captain or probably even more so?

A. That is right.

Q. In their discussion, what are some of the things they would say about him? Would they recount experiences they had?

A. More or less, general flying.

Q. What would they say about him?

A. I can't bring up any specific things. General things that you hear.

Q. One of the things you indicated was the subject of these conversations in particular and that was his disregard of regulations?

A. That is right.

Q. This was discussed at great length among the co-pilots you talk to?

A. Not particularly great length, just say off-hand, something on the order concerning some particular flight, and that is it. There wasn't anything specific. It was general. Plain old operations room gossip.

Q. After you came back from this flight, you didn't at once sit down and write this report up. How long after the flight occurred did you write it?

A. I would say three or four weeks.

Q. What was it finally determined you to write it up?

A. Like I say, in the first paragraph there, I think that Paul was giving us all a bad name, the ALPA, the Eastern Air Lines and anybody in the same sky with him.

Q. Is this the reason that you finally decided you would write it up?

A. That is one of the reasons. What triggered the whole thing off after this flight with Paul, I didn't want to fly with him anymore for the reason stated so I went into Captain Diggs' office and said, asked him what recourse I might have if I were scheduled to go on a flight with him again. Can I refuse that flight? And he said no, why? I said I have my own reason and he said that is not good enough for him. Then I gave him the reasons why I didn't want to fly with Paul again, and that is primarily why I wrote the letter.

Q. Did I understand you to say Mr. Diggs, who is Mr. Diggs

A. Chief Pilot of the Miami Base.

Q. He told you if you wanted to refuse to fly with him, you would have to put it down in writing your reason for it?

A. I would have to have something concrete.

Q. In writing?

A. Yes.

Q. So he would be able to produce it in the event—

A. If I refused to fly with him, yes.

Q. It was left with Mr. Diggs ostensibly for the purpose of justifying your refusal to fly with Mr. Woolley thereafter?

A. That is right.

Q. Did you ever have occasion to fly with him thereafter?

A. No, never flew with him after that.

Q. Is it possible for you to duck a captain, not being paired with him If you don't want to fly with a certain party, is it possible to get out of flying with him in the way you choose your flights?

A. We all bid on the run we desire to fly. We don't bid the particular captain or stay with a particular captain so in normal bid sequence, it might be possible I would fly with him again and it may not be possible, depending on where he went.

Q. Do you want to answer my question?

A. I believe I did.

Mr. Bennett:

Mr. Reporter, read the question.

(Thereupon the question was read by the Reporter.)

The Witness:

If I choose to bid one particular route and he is flying another route, the two of us will never meet. If I choose to fly the same route he is flying, we may meet.

(By Mr. Bennett):

Q. I understand that. My question was, is it possible for you to so arrange your flying or bid it or however, that you don't fly with a certain captain?

A. No, it isn't possible for me to do it, except through the bid.

Q. It is possible for you to bid and not fly with a certain captain, is that right

A. Yes.

Q. In that circumstance, you woldn't need a letter like this, would you?

A. Wait a minute. If I am—

Q. I will withdraw the question.

You took the letter into Mr. Diggs and told him you didn't want him to use it for any purpose whatsoever?

A. That is right.

Q. Will you tell me why it was that you did take it into him?

A. For the reason I stated.

Q. You tell me now you didn't want him to use it.

A. Until I said he could.

Q. You took it into him in July?

A. I think about the first part of July.

Q. And then I believe you said you finally gave him authority to use it?

A. Yes.

Q. When did you give him authortiy to use it?

A. Months later; I would imagine it would be in the early of October sometime.

Q. October of 1955?

A. Last year.

Q. About three or four months

A. Yes, from July to October.

Q. Did you walk into his office one day and say "you know that letter I gave you. You can use it now?"

A. It gets a little complicated.

Q. Tell us how it comes about you went into him in October or November and gave him the authority to use it

A. I gave a copy to Captain Diggs and a copy to Captain Rupprecht with the understanding that we would clean our own house in ALPA before the Company would have anything to do with it. It was going through the normal ALPA channels all this time and I had a lot of talks with various ALPA members who were concerned with all of this until finally it was more or less forgotten about. Along about in October through the advice and discussions of some of these other members of the ALPA—

Q. Is this the reason you went into the Company?

A. And then I went in and said "do with it what he chooses."

Q. What did you expect he would do with it

A. I didn't have the least idea. That is up to him.

Q. Did you ever refuse to fly with another captain?

A. No.

Q. Have you ever written up any other captain?

A. No, you don't go around doing that every day.

Q. Have you ever been in a flight with another pilot where there have been untoward happenings?

A. No, I seem to get along with most people I fly with. No trouble sof far and I haven't had any trouble with Paul up until that.

Q. That is the first time in your flying career when anything untoward in the flight had take place; that is, the pilot who might be flying the plane was—made slight slips or errors of judgment and what not

A. We all make slight slips and errors of judgment at times but I don't believe the substance of this letter is any slight slip or small error of judgment. I wouldn't

have written a letter unless I thought it was worthwhile writing.

Q. In your opinion, the happenings on this flight justified your writing the letter?

A. I think so, yes.

Q. This letter in its inception and your taking it to Mr. Diggs and the other pilot was all your own idea, is that right

A. That is right.

Q. And your subsequent visit to Mr. Diggs' office in which you told him he could use the letter for whatever purpose he desired, was also your own idea?

A. More or less; a lot of time elapsed and I talked to a lot of people who were actively doing something about it or inactively as the case warranted, and after all that time period; we decided to go ahead.

Q. Did you ever during any of this period, did you ever talk to Mr. Woolley about it

A. No, I didn't.

Mr. Bennett:
Nothing further.

Mr. Harlan:
Nothing else.

Mr. Rivenbark:
The Board has no questions.

Mr. Harlan:
May we go off the record a minute?

Mr. Rivenbark:
Off the record.

(Discussion off the record.)

We will adjourn until 9:00 o'clock tomorrow morning.

(Thereupon the hearing was adjourned until 9:00 o'clock A.M., Thursday, June 21, 1956.)

(The hearing in the above entitled matter was resumed at 9:00 o'clock A. M., July 21, 1956, pursuant to adjournment.)

Mr. Rivenbark:

Are you ready to proceed?

Mr. Bennett:

Yes.

Mr. Harlan:

Yes.

I would like to call Mr. Hughes.

Thereupon: WELTON ROBERT HUGHES, a witness of lawful age, having been first duly sworn, was examined and testifed as follows:

Direct Examination.

(By Mr. Harlan):

Q. Please state your name.

A. Welton Robert Hughes.

Q. What is your occupation with Eastern Air Lines?

A. Copilot.

Q. While you were not here, some references was made to a letter dated February 16, 1956, which you wrote to Captain F. A. Stone, with respect to Flight 644 on February 5, 1956, and Flight 647 on February 6, 1956. I

would like to show you this letter and ask you if this is a letter which you wrote?

A. Yes, sir, it is.

Q. That was a handwritten letter?

A. Yes, sir.

Q. Now, I would like to show you this typewritten copy of it and ask you if that is a true and correct copy?

A. Yes, sir.

Q. You looked at that just before we came in here?

A. Yes, sir, I read that this morning.

Q. That is a correct copy of your letter?

A. Yes, sir.

Mr. Harlan:

I would like to have this marked as Company's Exhibit No. 2 for identification.

(Thereupon the document was marked as Company's Exhibit No. 2 for identification.)

(By Mr. Harlan):

Q. Are the facts stated in that letter of February 16, 1956, which has been identified as Company's Exhibit No. 2, true and correct?

A. Yes, sir.

Q. I would like to show you a photostatic copy of what appears to be the flight log for trip 647 of February 6, 1956, and ask you if you can identify that as being a correct copy of the flight log for that trip?

A. Yes, sir, this is the flight log for the trip and all the entries in this are made by me with a few exceptions.

Q. Would you state for the record, and we will not put this in as an exhibit, but will you state what the entries are, particularly with reference to the area from approximately Wilmington to Miami?

A. All the entries here, I made this form out while we were on the ground in Boston and the proposed flight plan and made all the entries all the way down here at East Charleston. I entered the time there and at that time we were 16,000; the DVFR is not my writing.

Q. Was that at Wilmington?

A. No, sir, East Charleston.

Q. At East Charleston?

A. Actually it is called Azalea Intersection which is a check point there and at that time we were still IFR at 16,000.

Q. Who put that in there?

A. I don't know.

Q. That was not on there at the time you were making it out?

A. No, sir.

Q. You were still IFR at that time?

A. Yes, sir.

Q. When did you change to VFR?

A. After we had checked Gateway. Gateway is the next check point.

Q. Where were you at Gateway?

A. We were there at 48.

Q. 5:48?

A. Yes, sir.

Q. At that point the record shows you were estimating Vero Beach at what time?

A. I didn't estimate Vero Beach because at that time we were over Gateway. The captain started handling all communications and check points thereafter.

Q. He made all the radio contacts?

A. Yes, sir, from Gateway until we got on the ground in Miami. I didn't transmit anymore.

Q. Who made the entry, six thirty estimated time at Vero Beach?

A. I put in there, six thirty.

Q. That is the order he gave you?

A. Yes, sir, I did not scratch out Snapper check point which I put in the flight plan, our proposed route. Someone else scratched out the check point and wrote Vero Beach.

Q. You don't know who did that?

A. No, sir.

Q. What time does the log show you actually were at Vero Beach?

A. 0637.

Q. Can you tell us exactly where you were at six thirty?

A. Yes, sir, six thirty, at the time the captain picked up the mike, Vero Beach six thirty; we were east of there offshore, Patrick Air Force Base. I was sitting on the right-hand side. I was looking down at Patrick at the time he was talking and at the time I was looking there, there were search lights going. There were trucks running around with lights on but we were actually east of Patrick at six thirty.

The captain did all the communication. He checked Vero Beach six thirty and gave an estimate for Bell Glade. At the time it was 0637. That was our actual time over there, I put 0637.

Q. That is the time you were over Vero Beach?

A. That is right.

Q. At six thirty you were east of Patrick Air Force Base?

A. Yes, sir.

Q. Do you know what the captain reported as time of being over Vero Beach?

A. 0630.

Q. That is what he said in his radio contest?

A. That is the time he gave.

Q. The official flight leg shows it to be 6:37?
A. That is right.

Mr. Harlan:
I had not planned to put this in but I will be glad to do so.

Mr. Bennett:
I would like to see it.

Mr. Smith:
I think it should go in because some of the testimony is vague unless you know what is on the log, when he talked about scratchig out things, it had no meaning unless you look at it.

Mr. Harlan:
I would like to have this marked as Company's Exhibit No. 3.

(Thereupon the document was marked as Company's Exhibit No. 3)

(By Mr. Harlan):
Q. Do you have anything else you would care to say about these incidents reported in your letter of February 16, 1956?
A. I think the letter covers it quite well. I just point out the irregularities in the letter. If it isn't too clear, I will be glad to clarify any of the statements I made in the letter, but outside of that, I have nothing further to say.
Q. As far as I know, the letter is clear. You may cross examine.

Cross Examination.

(By Mr. Bennett):

Q. Do I understand this is the only trip you ever made with Mr. Woolley?

A. Yes, that is right.

Q. And isn't it a fact that you did not make out the flight plan of this trip in Boston?

A. Yes, sir, that is right.

Q. You did not?

A. Yes, sir.

Q. Now, did you go with Mr. Woolley to check the weather?

A. In Boston?

Q. Yes, sir.

A. Yes, sir, I was standing there.

Q. You were with him when he was checking the weather?

A. Yes, sir; I might clarify that. Had he gone some place else other than operations to check it, I did not go with him. They had a board there where they have all the winds to make out a flight plan.

Q. What about when you left Miami? Did you check the weather with the captain?

A. I didn't go with him at the time it left Miami. However, I did check the weather on my own. I think you will find I initialed the schedule in the Weather Department where it says we were in there getting briefed on the weather and I checked the weather.

Q. Prior to the time you started this trip with Mr. Woolley, did you know Mr. Woolley by reputation

A. I knew Mr. Woolley. I had met him around the airport. I had never flown with him and I knew nothing about his flying ability at all.

Q. My question is had you learned something about Mr. Woolley by reputaion? Had you discussed Mr. Woolley's flying capabilities and manner of conduct of flights with other co-pilots from Eastern Air Lines from time to time?

A. I have heard Mr. Woolley discussed in several groups. However, I did not enter that iscussion because I didn't know anything about it. I listened to the conversation.

Q. Over what period of time did these conversations occur, over a matter of years?

A. I don't know. I have been based in Miami over four years.

Q. It was during this time the conversations took place where you were one of a group and they talked about Mr. Woolley?

A. From time to time, yes.

Q. I assume it would be pretty difficult under those circumstances for you not to form an opinion of the individual?

A. Mr. Bennett, I form my opinions regarding a man not on hearsay. I base it on what I know.

Q. When you got into the cockpit with Mr. Woolley on this occasion, it was as though you were getting in the cockpit with someone you had known for years and trusted?

A. No, it wasn't on the same basis. I introduced myself at the hour we reported into the airport. I introduced myself and he said "glad to meet you" and I said "glad to meet you," and I said "this is our first trip together."

We had a conversation there and so I will say going northbound on the trip we sat in the cockpit and talked about one thing and the other, and there wasn't any ill feeling there at all on my part, and I don't think on his

part and I certainly didn't have an opinion of Mr. Woolley before that time.

Q. You had no misgiving at all? You felt about Mr. Woolley as you would feel about any pilot you were requested to fly with? Is that what I am to understand?

A. As far as flying with him, yes. As far as our personal relations, if you are trying to say I had made my impression of Mr. Woolley before this trip, that is false. I did not have any opinion personally or otherwise of Mr. Woolley before I took this trip.

Q. How long have you been flying as a copilot for Eastern Air Lines?

A. This is my seventh year.

Q. During that seven years I take it there have been times when the captain of your flight has dubbed up an approach?

A. We all, myself included, we all make some approaches we are not too proud of.

Q. Did you write those captains up?

A. No, sir, I have never refused to fly with a pilot in my life. I have never stated anything derrogatory about his flying ability until this case came up. I have never been put in a position I was put in this time.

Q. You have flown with other captains who have made errors?

A. Yes, sir.

Q. And have fussed up an approach, not done it exactly according to Hoyle, according to the book?

A. Well—

Q. Just answer the question.

A. Some of these questions cannot be answered yes or no.

Q. You can qualify them.

A. I have never flown with a captain that disregarded procedures. They all went through the procedures. It

might not be as smooth a job and with the accuracy that others might do it or themselves done it before, but the approach itself was according to procedures and a good job.

Q. Am I to understand in your seven years as copilot for Eastern Air Lines, no captain with which you have flown except Mr. Woolley, has made an approach not in accordance with procedures?

A. Yes, sir, that is right.

Q. Every approach that you have ever made has been exactly in accordance with procedures?

A. Approaches I made?

Q. Yes, all the approaches you have made for Eastern Air Lines, you have never deviated from procedures and the captains with whom you have flown in seven years, in all the approaches, they have never deviated

A. That is right, with the exception of a local condition where they give us a clearance and things other than established procedures.

Q. Under those circumstances, it would be according to procedures?

A. That is right.

Q. Your answer is still the same, in your seven years flying, the only time a pilot captain has deviated from prescribed procedures was this one occasion?

A. Yes, sir.

Q. And I take it in view of the fact that you took it upon yourself to write up Mr. Woolley, for having deviated from prescribed procedures, that we can expect any captain with whom you fly who inadvertently deviates from procedures, he is going to get a letter from you?

A. I am not going to sit over there and be put in a dangerous position; no, as long as anybody deviates from procedures, I am not going to write a letter and—however, any time he jeopardizes the safety of that flight,

then I think it is my duty as a copilot to make some effort to correct that situation so it will not happen again.

Q. Did I understand you to say that Mr. Woolley was handling the radio at the time you went over Vero Beach?

A. Yes, sir.

Q. And did I understand you to also say that Mr. Woolley checked Vero Beach on the radio at six thirty?

A. That is right.

Q. And you heard him do so?

A. Yes, sir.

Q. And still you put down six thirty seven?

A. I put down the time we passed over Vero Beach.

Q. I am not certain you answered my question. I am relatively certain but I am not positive. When the captain of a flight checks over a point at a certain time, this check is entered in the log of the Company, is it not, at some base? In this instance, I think it is where, Jacksonville?

A. No, sir, I think he was talking to Miami.

Q. If he checks over Vero Beach at six thirty, that is entered in the log in Miami?

A. My understanding is that any transmission sent or received is recorded by the radio operator receiving or transmitting that message and that becomes an official record of the Company.

Q. If the captain checks over a point at six thirty, and this goes into the official record of the Company, isn't the ordinary procedure that the party keeping the log in the airplane, would put down six thirty, is it ordinary procedure?

A. Yes, if it is correct.

Q. And if you have a different idea about it, you put down whatever you see fit?

A. No, but Mr. Woolley was giving this 0630 to comply with his estimate of 0630—

Q. Did he tell you this?

A. Did he tell me this?

Q. Yes.

A. I was there in the airplane with my earphones on—

Q. How are you going to tell us what Mr Woolley was doing?

A. I was there.

Q. He estimated 6:30?

A. That is right.

Q. But you said he estimated 6:30 for some reason?

A. Yes, sir.

Q. Did he tell you his reason?

A. It was obvious.

Q. You don't conclude this. Is that what I am to understand?

A. I will go back—

Q. I would have an answer to my question.

A. I will answer your question but I have to inform you of what took place before.

Q. I am not interested. I asked a question.

A. I am sure the Board would like to hear it.

Q. If they want to know anything they will ask you a question.

My question is, is it a fact you just concluded Mr. Woolley was doing this for a purpose?

A. I will tell you—in this particular instance—

Q. Can you answer my question?

A. Yes, I can answer it very well. We are advised that we were to be cleared of the area at 0630. When he was going direct, he estimated Vero Beach at 0630. I drew a line from Gateway to Vero Beach measuring off ground speed and allowed more ground speed than we were making, thinking he would use more power. I informed him he would not be there at 0630—

Q. I still want an answer to my question.

A. —and I informed him that the best estimate I could give was 0636. He asked me "is that your estimate," and I said "that is the best I can figure out." Andf he said "my estimate is 0630," and I said "all right, you are the boss."

At 6:30, since we were already advised we were to be cleared at 0630, he picked up the mike and reported over Vero Beach at 6:30, and he was not over Vero Beach at 6:30. At the time he reported, I was looking at Patrick Air Force Base.

Q. Answer the question.

A. With the developments of what happened before this time, I guess I did assume that he was giving that position report at 0630, so that he would be cleared of the danger area.

Q. Upon this assumption when the report was made, how did you ascertain that it was 6:37 instead of 6:30?

A. We had Vero Beach tuned in, and Vero Beach, on the needle, swung at 6:37.

Q. Where did you ascertain it was 6:37?

A. By the clock.

Q. Whose clock?

A. My clock.

Q. Did you look at the captain's clock?

A. No, sir, we got a time check before we left Boston and I assume he set his.

Q. Did you see him do it?

A. No, sir.

Q. Why did you make the assumption he did?

A. That is part of his responsibility.

Q. Did you ever fail to check your clock?

A. No, sir, that is a copilot's responsibility before we leave.

Q. And in seven years as copilot, you never failed to do that?

A. No, sir.

Q. Have you ever found that two clocks can be different?

A. Yes, sir, they can be different.

Q. And your experience tells you that they are different on occasions, is that right?

A. They are different on occasion.

Q. You don't know whether they were different here or not?

A. No, sir, I don't.

Q. This was a check over a facility? It was a visual check?

A. On my part?

Q. I am asking you. Was this a visual check?

A. No, sir.

Q. It was a check over the facility itself?

A. Yes, sir, over the Army range.

Q. What was your altitude at the time you were at 6:30, what was your altitude?

A. That I don't know.

Q. 20,000 feet?

A. No, sir.

Q. Three thousand feet?

A. I told you I didn't know the altitude we were at the time we were passing Vero Beach. We had been cruising at 16,000. He started his descent and canceled his IFR and I didn't—

Q. What was the visibility at that time?

A. Unlimited.

Q. You were somewhere in the neighborhood of 16,000 feet?

A. No, sir.

Q. 12,000 feet?

A. No, sir, I have verified that by answering we had been cruising at 16,000. We started our descent. I don't know what altitude we crossed Vero Beach.

Q. But the terrain would be visible clearly, is that right?

A. Yes.

Q. When you put down 6:37 on the log, did you tell the captain you were putting it down?

A. No, sir.

Q. Why?

A. Because I had been advising him of my action prior to that time. He completely ignored anything I said so after a man is ignored for a period of time, he gets to the point where he sees no use in going ahead advising him.

Q. You knew, did you not, when you put down 6:37, that the time the captain was reporting 6:30, there was going to be a very great discrepancy in the time elements here?

Q. Did you have in mind right then that you were going to write a letter?

A. No, sir, I did not.

Q. When did you make up your mind you were going to write a letter to the Company on it?

A. We got in that morning and I went home and went to bed. I thought about it very much. I thought that there had been two instances which happened on this trip which were very important, not only to me but to the lives and the safety of the passengers that fly Eastern, and concerning every pilot that is flying for a profession. I was very concerned about it. I gave it a lot of thought. It wasn't a spur of the moment deal. I thought it out clearly. I went out to the airport and I went to see Mr. Shannon. He was out of town at the time. I went up to see Captain Stone and I told him the problem I was confronted with and so he told me, he said—I have forgotten what actually he did say after I made my verbal statement. However, at a later date, he asked me if I had carefully thought over my discussion with him and would still feel that a state-

ment should be made concerning the two instances, and I told him I still felt very strong about it, that I had thought about it since, and he asked me if I would write a letter and so I told him yes.

I sat down and wrote the letter and sent it out to Captain Stone.

Q. When you wrote this letter, you recognized, of course, you were impinging a pilot's flying ability. There was no question about that in your mind?

A. No, sir.

Q. You were doing this having flown with the gentleman only one time? Did this occur to you?

A. Yes, sir.

Q. And you still thought your writing of the letter was completely okay and should have been done in the interest of safety?

A. Yes, sir.

Q. On the approach to Boston on Flight 644 of February 5, 1956, can you tell us approximately the time that you arrived or were going to make your approach to the Boston airport? What was the time approximately? Was it in the morning?

A. Yes, around six o'clock.

Q. The weather was very bad?

A. Four zero one.

Q. There were icy conditions?

A. No, sir, no icying conditions.

Q. There was snow on the ground?

A. Snow on the ground and snow on the runway are two different things.

Q. I asked you if there was snow on the ground?

A. I don't know.

Q. Were you aware during any of this approach that there were no other aircraft in the vicinity?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. Were you informed of that by the ATC?

A. At what time?

Q. At any time?

A. Yes, sir, after we had crossed the outer marker and was advised there were no other traffic.

Q. When you had crossed the outer marker, you were then informed by ATC there were no other aircraft in the vicinity, is that right?

A. We were cleared for an appuroach, that there was no other traffic on the approach.

Q. Was that his information to you or that there were no other aircraft in the vicinity? Were you led to believe there were no aircraft in front of you or on the approach leg or were you led to believe there was no aircraft in the vicinity?

A. The vicinity is the vicinity of the outer marker, the area in general.

Q. The area in which you were?

A. Yes, sir, cleared for an approach. There are no other aircraft, traffic at the outer marker or something to that effect.

Q. The information conveyed to you by ATC, you had the air out there?

A. That is right.

Q. That is the information you received? That is what he wanted you to know?

A. That is right.

Q. When you reached the outer marker, you say in your letter that the captain immediately put the plane in a screaming dive, a 45-degree banked turn and descended 1,000 feet?

A. To a thousand.

Q. Will you describe for us this screaming dive 45-degree bank? In the first place, what is the usual rate of descent? What kind of a plane?

A. Super C Constellation.

Q. What is the ordinary rate of descent in a Super C?

A. A descent is set up for 500 feet a minute. We normally when it is unlimited, we descend one thousand feet—

Q. When the weather is unlimited—

A. I didn't say that. I say when there is no traffic below us, we descend as much as one thousand feet a minute.

Q. A thousand feet a minute descent is permissible when there is no traffic; is that what you are saying?

A. Yes, sir, unrestricted descent.

Q. A screaming diving descent, I would take to mean maybe ten times that?

A. Yes, sir.

Q. Was it here?

A. Not ten times.

Q. Nine times?

A. No, sir, but our rate of descent only goes up to two thousand feet a minute.

Q. Was it three thousand feet a minute?

A. How are you going to be able to tell?

Q. I don't know.

A. Our instrument only goes two thousand feet and then it stops.

Q. In your estimation, this screaming diving 45-degree descent was something more than two thousand feet a minute, is that right?

A. Yes, sir.

Q. It ran off of your instrument?

A. The instruments were stopped at two thousand feet.

Q. The bank was 45 degrees or probably more than that?

A. It is possible but 45 degrees was about the bank.

Q. How many minutes were you in this screaming diving descent?

A. Possibly a minute.

Q. One minute?

A. Yes, sir.

Q. The screaming diving descent that lasted a minute, you lost your two thousand feet?

A. Yes, sir, we entered that turn at three thounsand feet. At the time he pulled out, he pulled out at one thousand feet.

Q. In a minute you lost two thousand feet?

A. That is right.

Q. You say the bank was 45 degrees. At 45 degrees, what was your air speed approximately, do you know?

A. At the time we crossed the outer marker, 220 knots. At the time he started his turning to the left, he pulled the power back and started his descent. He did not slow the airplane down any appreciable amount.

Q. Pulled the power off and started into this screaming dive 45-degree left turn?

A. Yes, sir.

Q. And he lost two thousand feet in one minute and then you came out on a heading close to what you wanted to the airport?

A. Yes, sir.

Q. What was your speed then?

A. It was still in excess of approach speed.

Q. Do you know what it was?

A. No, sir.

Q. 220 knots?

A. No, sir, he had slowed down.

Q. It was slower than 220 knots then?

A. Yes, sir.

Q. And then you went in on the localizer and you broke out?

A. We did not go in on the localizer.

Q. How did you go in?

A. To the left of the localizer.

Q. You didn't have the localizer at the time you were flying up to the field?

A. Yes, sir, we had a localizer, everything was working and had been checked. Coming up at the time he first picked up the localizer was north of Providence, Rhode Island. He never did return to the localizer, and still remained to the left of the localizer.

Q. Where were you able next to check your position? Did you come out at the inner marker or go over the inner marker?

A. No, sir.

Q. You never got the inner marker?

A. Not on the approach. He completed a 360-degree turn northeast of the outer marker.

Q. Northeast of the outer marker?

A. To the left of the localizer?

Q. Yes.

A. At one thousand feet?

Q. Yes.

A. He started his approach and he started letting down.

Q. Still to the left of the localizer?

A. Yes, sir, we had no other check until he broke out.

Q. If I understood your testimony, he made his 360-degree northeast of the outer marker?

A. Let's put that north, northeast; northeast would leave an idication there he was possibly on the localizer which runs northeast, southwest, but he was still to the left and north, northeast of the outer marker.

Q. And then he headed for the field or for the inner marker?

A. No, sir, he did not head for the inner marker.

Q. Where did he head for?

A. I don't know, in the general direction of the airport.

Q. In the general direction of the airport and you broke out where?

A. At the time we broke out, we were to the left of the smoke stacks which are also to the left of the localizer.

Q. You were to the left of the smoke stacks and that would put the smoke stacks on your right?

A. That is right.

Q. And at the moment you broke out and the smoke stacks were to your right, what was the altitude of the plane? Was it level or flying straight?

A. It was straight and level.

Q. How far away from the smoke stacks were you at that point?

A. It is a matter of feet. It is hard to judge your distance up there in feet by sight. When I saw the smoke stacks, they were reporting 400 feet ceiling and one mile visibility at 400 feet. I saw the smoke stacks and I called the smoke stacks to his attention. He came off the gauges.

Q. He made a right turn?

A. Yes, sir.

Q. And I presume then a left turn?

A. That is right.

Q. But in doing this, you never got over the inner marker?

A. That I don't know.

Q. How far from the airport are the stacks, do you know?

A. Again I would say roughly one-half mile. They are on the south side of the river. The airport is on the north side of the river.

Q. What was your altitude when you broke out?

A. 400 feet.

Q. If you had proceeded straight ahead you would have passed within, from your testimony, you would have passed over the stacks 49 feet over their top approximately? They are 351 feet high.

A. According to the instruments, that is right. I don't think the instruments are that accurate.

Q. Did it look like you were going to hit them?

A. We were to the left of them and had he continued on, we would have missed them but I didn't know that.

Q. At what altitude were you required to break out or should you have broken out?

A. 400 feet.

Q The difficulty as you see it is he was not on the localizer?

A. Not on the localizer.

Q. Below the glide path?

A. Yes.

Q. How do you know you were below the glide path?

A. By indication on the instruments; also a· ·ed by radar.

Q. The captain was making the approach?

A. Yes, sir.

Q. What is the function of the copilot during this period?

A. The function of the copilot during the approach is to monitor the captain's approach; also make check points over the check points—

Q. You call out the altitude also?

A. No, sir.

Q. Did you call the captain's attention to the fact that he might be low?

A. Yes, sir.

Q. You did call his attention to it?

A. Yes.

Q. He made no reply to you?

A. No, sir.

Q. He didn't pay any attention to you at all?

A. No, sir.

Q. Had you requested GCA?

A. No, sir.

Q. As a matter of fact, hadn't you requested you didn't want GCA?

A. No, sir.

Q. Do you know if there is a rule with respect to aircraft entering the so-called slot from Wilmington when the area is suspposed to be cleared? Do you know if there is any rule with respect to that? The restricted area—

A. Yes, sir, there are rules governing your flight across there. However, at the time we entered that control level, the area wasn't closed.

Q. It wasn't closed?

A. No, sir.

Q. But ATC had been informed no doubt, or do you know, that come 6:30 they wanted the area cleared?

A. I don't know.

Q. In any event, when you passed Wilmington, there was no indication to you or the captain that the area in front of you or in the slot or this restricted area was to be cleared at 6:30?

A. No, sir.

Q. When an area of this kind is supposed to be cleared within a given time, is the Company informed of that in the ordinary course of things?

A. Yes, sir.

Q. And when the Company is informed, don't they give that information to the crew before they start on their flight?

A. If they know it prior to the flight.

Q. Do you know if there is any program of notification

to the Company under these circumstances, time-wise? Is the ATC or the Army—do they in the ordinary course of things inform the Company prior to an area being closed, a certain time before the area is supposed to be closed?

A. I don't know if there is any program set up for that or not, but as soon as the Army has something planned, I am sure they notify Air Traffic Control of what time they want the area closed; whether it is a set number of hours, I don't know.

Q. In any event, when you left Boston, if there was any information on the subject, the Company did not advise the captain or yourself, is that right? When you left Boston, if the Company did have any special notice, it wasn't transmitted to you or the captain?

A. That is right.

Q. When you passed over Wilmington and, I believe Wilmington is the point at which you enter this so-called slot—what is this?

A. Control 1150.

Q. What is this slot we speak about?

A. That control 1150 is a direct route from Wilmington to Palm Beach, Florida.

Q. Is it an airway?

A. It is a control area approximately 20 miles wide.

Q. That is the airway we term the "slot?"

A. I haven't heard the term slot.

Q. At the time you entered this airway and this control area, you entered at Wilmington?

A. Yes, sir.

Q. Your next check point is what?

A. Azalea.

Q. Is that at the—

A. —intersection, yes, sir, off of the Wilmington airway and Charleston, South Carolina Airway.

Q. After you left Wilmington, where did you get—where did you first learn that they were to—you were to have a different clearance?

A. Approaching Azalea, north of Azalea.

Q. It was before you got to Gateway?

A. It was before we got to Azalea.

Q. Before you got to Azalea?

A. Yes, sir.

Q. And who gave you the clearance or who informed you of this situation?

A. Jacksonville Eastern Radio.

Q. The aircraft 647 is able to contact by radio only two stations, is that right, two company stations in the ordinary course of things for your clearances?

A. Repeat that.

Q. Strike that.

With respect to the radio contact of your aircraft 647, and with respect to clearances and checking, you may talk to either Jacksonville or Miami, is that right?

A. If you are in their area. We have a limitation or our range.

Q. In this aircraft, you were checking with Jacksonville?

A. Yes, sir.

Q. And you could also check with Miami?

A. No, sir, not at the time.

Q. Not at the time of this re-clearance?

A. Yes, sir, we could not check with them all but we did have a channel we could contact.

Q. Your contact then at this time was only with Jacksonville?

A. Yes, sir.

Q. The aircraft or any messages with respect to your clearances, and what not, you informed Jacksonville or they inform you, as the case might be?

A. At this particular time yes, sir.

Q. And the individual in Jacksonville to whom you communicate, they in turn communicate with ATC?

A. Yes, sir.

Q. Do you know if the Company Jacksonville radio operator is also in touch with the Patrick Air Force Base?

A. No, sir, I don't know that.

Q. The only thing you know is whatever contacts are necessary with ATC or anybody else with respect to your clearance, is relayed through your radio contact with the Company in Jacksonville?

A. Yes, sir.

Q. The Jacksonville radio operator that came on and wanted to tell you something about your clearance?

A. Yes, sir.

Q. What did they tell you?

A. Jacksonville called and said ATC recleared Eastern 647 to the Miami Airport via Barracuda—Victor Three—Victor Three West—Miami maintain 16,000. At the time I received the clearance I asked Jacksonville why they had recleared us. They said the direct route was closed and I repeated the clearance back and accepted the clearance and then when the captain—at the time the clearance was received, the captain wasn't in the cockpit. When he came back up front, I advised him he had been recleared and he said nothing. Then we were over Gateway and we had heard on one of our other trips check Snapper and estimate Palm Beach. Snapper as you see on the map was through the area they wanted to clear.

Q. Who wanted it cleared?

A. The Army.

Q. How do you know they wanted to clear it?

A. We had received that message from the Jacksonville radio.

Q. Did they say when they wanted it cleared?

A. Yes, sir.

Q. What time did they say they wanted it cleared?

A. By 0630.

Q. You say the captain said nothing. Did he do anything?

A. At the time I informed him of the reclearance?

Q. Yes, sir.

A. No, sir.

Q. You proceeded with the clearance in accordance with the manner in which they had cleared you?

A. Yes, sir.

Q. That can't be right.

A. Yes, sir, that is right.

Q. You accepted the clearance and followed it?

A. Up to a point. At the time I accepted it, we were north of Azalea and proceeded on that clearance.

Q. What next occurred?

A. Down as far as Gateway.

Q. And then what happened?

A. At Gateway when we heard this other trip check Snapper and estimate Palm Beach, the captain picked up the mike and asked Jacksonville why this other trip had been cleared through this area. They informed him "Jacksonville said stand by," and they checked—I assume they checked with ATC—ATC, the direct route is to be cleared at 0630 and then is when the captain deviated from the clearance I received north of Azalea. He advised Jacksonville. He requested direct Gateway-Vero Beach. They came back and said ATC advises unable to clear 647 direct Vero Beach. The captain said cancel IFR, going VFR direct Gateway to Vero Beach. Jacksonville said ATC advises that direct Gateway—Vero Beach, will take you through warning area 158, and the captain said advise ATC if they want to be of help to me, they can tell me what time they plan to pull the trigger and so that was the language communication we had with Jacksonville.

Q. Where is this area, what do you call this area?

A. A warning area.

Q. Where did this warning area extend?

A. It extended from the East Coast of Florida out to approximately, I don't know how many miles, west of control area 1150, north of the direct route Barracuda to Maytown, south of the east leg of the Jacksonville low frequency.

Q. Do you know whether or not the mileage betwween Barracuda and Maytown, which according to your statement here would still be in the area, and the mileage from Barracuda to Vero Beach is very different?

A. The mileage from Barracuda to Maytown and Barracuda to Vero Beach, I have never measured the distance and never compared the difference there; never had occasion to know the distance across there.

Q. As a matter of fact and I would ask you to look at the map, as a matter of fact, the distance between Barracuda and Maytown and the distance between Barracuda and Vero Beach, are almost precisely the same?

A. Approximately, yes.

Q. So that no matter which way he went, whether he went by way of the clearance that was given to him by ATC or if he went in the way he did, he would have exactly the same time to get out of the area, isn't that true?

A. You are saying—

Q. Answer my question, if it is possible. He did not go down to Barracuda at all; therefore, your mileage, Barracuda to Vero Beach are irrelevant in regard to his route across there. He never went to Barracuda?

A. No, sir, he did not.

Q. How did he go?

A. Direct Gateway to Vero Beach.

Q. He went direct Gateway to Vero Beach?

A. Yes, sir.

Q. Did you go to Snapper?

A. No, sir, it would put you in the area they wanted cleared.

Q. You went direct Gateway to Vero Beach?

A. That is right.

Q. This manner of flying would get you out of the area, would it not, quicker than if you went either of these clearances, I take it?

A. A direct route will get you any place quicker than going in a round-about way.

Q. If he had followed, according to you, if he had followed the first clearance, Baracuda-Maytown, or if he had followed the clearance which he finally decided to take, Barracuda-Snapper-Vero Beach, he would have been in the area longer than the fashion in which he actually did that?

A. He did not follow a clearance at all. He did not take a clearance. He went Gateway to Vero Beach.

Q. Will you answer my question?

A. Had he gone by way of Barracuda or Snapper to Vero Beach, yes, he would have been in the area longer than he would have been following what he did take.

Q. I take it he flew that way?

A. A direct route?

Q. Yes.

A. Yes.

Q. The other portion of my question you left out; he was out of the area quicker the way he went than he would have been had he followed the first clearance that was offered, Barracuda-Maytown—

A. He was not out of the area by the time it was to be cleared; however, he was out of the area quicker than by going direct than if he had gone Baracuda to Maytown.

Q. When the captain informed the radio operator that he had canceled his IFR, this was a prerogative that is his?

A. That is right.

Q, He didn't violate any rule or regulation that you know of, did he?

A. No, sir

Q. And when he also informed the Company raido and ATC he would fly Gateway DVFR Vero Beach, this was also preogative of his? It is his preogative to cancel IFR and go DVFR. He didn't violate any rule or regulation when he did that?

A. No, sir.

Q. You were concerned, I take it, that the trip would be certain to get out of the area by six thirty?

A. Yes, sir.

Q. Had it occurred to you that flying either the clearance which had first been offered him or the clearance Barracuda-Snapper-Vero Beach, would not get you out of the area sooner than if you went direct?

A. If we followed—

Q. Answer the question, did this occur to you?

A. Yes, I was aware of the fact it would have taken longer.

Q. He had a right to go DVFR?

A. The captain has a right to do it, although—

Q. Does he have that right?

A. A captain has a right in an airplane to make all decisions.

Q. How would you have done it?

A. I would have accepted the clearance and gone to Barracuda direct Maytown.

Q. What time would you have gotten to Maytown?

A. I hadn't figured an estimate.

Q. It is exactly the same distance between Barracuda and Vero Beach as it is to Maytown—can we assume you estimate it Maytown would have been exactly the same?

A. No, sir, because the estimate I gave the captain arriving over Vero Beach was based on the direct route which is a shorter or less mileage than it is going Barracuda-Maytown. That was the estimate I gave, the direct route and that is the mileage I used.

Q. I am not sure I understand. You are saying it would have taken you longer?

A. Had we gone to Barracuda, yes, sir.

Q. Your clearance was to Barracuda?

A. The original clearance I received and accepted?

Q. Yes.

A. At the time, yes, sir, we were cleared Barracuda direct Maytown.

Q. It would have taken you longer?

A. Taken us longer than going from Gateway direct Vero Beach?

Q. Yes.

A. Yes, sir.

Mr. Bennett:

May we have a five-minute recess?

Mr. Rivenbark:

We will take a five-minute recess.

(At the conclusion of a five-minute recess, the proceedings continued as follows:)

(By Mr. Bennett):

Q. After this trip was over, did you then read over the radio messages that were exchanged between Jacksonville and Miami on this clearance?

A. Before we go into that, I would like to bring out had we gone as cleared, we would not have been in that danger area at all, so your previous question in regard to the length of time of being in the danger area instead of going direct, Snapper-Vero Beach, had no bearing on the time in the danger area at all because we were not supposed to be in there even for a minute, and in regard to your question now, no, sir, I did not read the radio messages.

Q. Have you ever read them?

A. No, sir.

Q. As I understand your statement, if you accepted and flown the clearance Barracuda-Maytown-Vero Beach, you would not have been in the danger area?

A. Yes, sir, that is right.

Q. Wouldn't the leg of the flight become Barracuda and Maytown but in a controlled zone or in a restricted area?

A. No, sir, they would have been in a controlled zone.

Q. But not a restricted area?

A. That is right, controlled 1386 zone.

Q. That was not the area that was being closed?

A. No, sir.

Mr. Bennett:

No further questions.

Re-Direct Examination.

(By Mr. Harlan):

Q. To be sure that the record is entirely clear on that, after all the previous confusion, the Barracuda-Maytown route was a perfectly legal route?

A. Yes, sir.

Q. It wasn't closed at any time on that day, so far as you know?

A. No, sir.

Q. And if you had gone on that route, you never would have been in the Patrick Air Force Base danger area at any time?

A. No, sir.

Mr. Harlan:

Incidentally, I think it would be a good idea to have one of these charts in as an exhibit, since it has been referred to and I would like to have the one Mr. Hughes has marked as Company's Exhibit No. 4. This is RF No. 10 and the date is—USFR 10, dated May 9, 1956, 11th edition. This is apparently the current chart, or I assume it is.

Mr. Shannon:

RF 10 of January 18, 1956, the 9th edition, is the one that probaly prevailed at the time.

Mr. Bennett:

I have no objection to the one he offered.

Mr. Harlan:

USRF 10, 1956 will then be marked as Company's Exhibit No. 4.

(Thereupon the document was marked as requested.)

Mr. Harlan:

Can we agree, Mr. Bennett, that this Company's Exhibit No. 4, although it is a later chart, is substantially the same in all material respects as the chart, that was in effect at the time of the incidents involved?

I would like to substitute as Company's Exhibit No. 4, chart captioned USRF 10, January 18, 1956, 9th edition.

(By Mr. Harlan):

Q. If you had taken the Barracuda-Maytown route as your clearance called for, you would not have been just east of Patrick Air Force Base at six thirty on that day, is that right?

A. Had we gone Barracuda-Maytown?

Q. Yes, sir.

A. Yes, sir, that is right.

Q. How long have you been a copilot

A. I have been with Eastern for a little over seven years and was TWA befire I went to Eastern.

Q. How long were you with TWA?

A. Better than a year.

Q. When did you make this computation that you would arrive at Vero Beach at 6:36?

A. At the time he canceled his IFR and advised he was going direct Gateway-Vero Beach.

Q. How did you compute that?

A. I took a map out, draw a line direct Gateway-Vero Beach, measured the distance and used the last ground speed which we had ben making, and added on speed for descent. Also thinking that maybe he would use more power to get out of the area by 6:30, and taking that under consideration, I figured an estimate of 6:36, at which time I advised the captain we would not be at Vero Beach until 6:36. He said "is that the best estimate you have?" And I said "that is the best I can figure," and he said his estimate is 6:30 and I said "yes, sir."

Q. You were looking at your clock when you made that computation?

A. Yes.

Q. Did you see Captain Woolley making any similar computation?

A. No, sir.

Q. He didn't measure the distance on a map or make any calculation so far as you could see, that you had made?

A. No, sir.

Q. When you said you had estimated arrival Vero Beach at 6:36, did he say "well." in effect, "you are crazy. It is now such and such a time and we have so many minutes and we can make it by six thirty?"

A. No, sir.

Q. All he said was "my estimate is 6:30?"

A. Yes, sir.

Q. I would like to have you look back at Company's Exhibit No. 3, which is the flight log and I call your attention to the fact that for the last five or six check points, at least, the flight came very close to making the estimate every time except at Vero Beach. In other words, at Azalea the estimate was 5:14 and were there at 5:15. The 5:15 was put in there by you?

A. Yes, sir, that looks like my writing.

Q. Was that your estimate or Captain Woolley's?

A. My estimate.

Q. You estimated 5:14 and actually got there at 5:15?

A. Yes, sir.

Q. And the next check point is Gateway. That is estimated 5:48. Who made that estimate?

A. There is some doubt there so I will answer that by saying I don't know.

Q. In any event, whoever made it made the estimates, the airplane arrived there at 5:48?

A. Yes, sir.

Q. An estimate of 6:30, Vero Beach. We know who made that and we know who put in the 6:37. Who made an estimate of 6:50 for Bell Glade?

A. Captain Woolley?

Q. He made that presumably looking at his own clock?

A. Presumably but I don' know how he reached it.
Q. He is the one who estimated 6:50?
A. Yes, sir.
Q. And the flight 649—
A. Yes, sir.
Q. Who put 649 on the log?
A. I did.
Q. Looking at your clock?
A. Yes, sir.
Q. Who made the estimate 7:03 at Miami?
A. Captain Woolley.
Q. Looking at his clock presumably?
A. Yes, sir.
Q. You didn't see him looking over at your clock?
A. No, sir.
Q. Who put down 7:03 arrival time at Miami?
A. I did.
Q. From your clock?
A. Yes, sir.
Q. Wouldn't that suggest to you that the clocks, there was no discrepancy in the clocks since the arrival times were so close to the estimates in all cases except Vero Beach?
A. Yes, sir.

Mr. Bennett:
Read the question.

(Whereupon the question was read by the Reporter.)

(By Mr. Harlan):
Q. You are very positive about all the times involved. Is that because there was a particular reason why you were watching the time?

A. Yes, sir, I was very concerned about the time because we were advised the area was to be cleared by 6:30, and we were not clear of the area by 6:30 and so I was concerned about the fact that we were east of Patrick.

Q. When it was 6:30 and you were looking down at Patrick Air Force Base, you were wondering when a guided missle was going to come in?

A. Yes, sir, that is possible.

Q. As far as you knew, shooting would start at 6:30?

A. That is all the information we had.

Q. With respect to the log, is it your understanding that the purpose of the log is to record the facts?

A. Yes, sir.

Q. And that is why you put down the actual time at Vero Beach?

A. Yes, sir.

Mr. Harlan:

That is all.

Re-Cross Examination.

(By Mr. Bennett):

Q. By your previous testimony, you stated that with a clearance from Barracuda to Maytown, you would still be in the danger area and then you have changed that to indicate that Barracuda to Maytown, you would be outside. When did you learn this?

A. I have known that all along.

Q. You didn't talk to somebody during the recess who reminded you of the fact?

A. I wanted to bring out the point a while ago. After thinking it over, I wanted that in the record of my testimony and so I have known that all the time that it wasn't in the danger area involved.

Q. You forgot it momentarily?

A. No, sir, I didn't forget it momentarily.

Q. What did you mean when you included in your final answer—what did you mean when you included Barracuda-Maytown leg within the restricted area?

A. I didn't include that leg in the restricted area.

Q. You did not?

A. No, sir.

Q. Did you ever make a miscalculation on an estimate?

A. Yes, sir.

Q. Is this something that happens quite frequently?

A. A miscalculation?

Q. Yes.

A. I will say that I make more of my estimates than I miss.

Q. Roughly 65% of the time would be a good percentage to make?

A. I would say a greater percentage than that.

Q. 75%?

A. Are you referring to the minutes?

Q. To a reasonable estimate.

A. To a reasonable estimate, we have five minutes to make. If that is reasonable, I would say I make 99% of the time.

Q. You have a five-minute margin of error in every estimate?

A. That is right.

Mr. Bennett:

Nothing further.

Mr. Harlan:

Nothing else.

Mr. Smith:
Did you make all the position reports during Flight 647?

The Witness:
I made all position reports down to Gateway.

Mr. Smith:
Who made them after Gateway?

The Witness:
Captain Woolley.

Mr. Smith:
During the time you were making the position reports, did Captain Woolley ever ask you or suggest that there was some discrepancy between your clock and his based on the time you were reporting?

The Witness:
No, sir, he said nothing.

Mr. Smith:
During the time Mr. Woolley reported, after Gateway, did you notice any discrepancy that was outstanding between what he reported and what you read on your clock?

The Witness:
No, sir.

Mr. Rivenbark:
You say now you went direct Gateway-Vero Beach?

The Witness:
Yes, sir.

Mr. Rivenbark:
And did I understand you to say that 6:30 you were due east of Vero Beach?

The Witness:
No.

Mr. Rivenbark:
At 0630 you were where?

The Witness:
East of Patrick.

Mr. Rivenbark:
In your letter you said due east and in your testimony you said due east. Do you mean on a 90-degree relative bearing?
The point I am trying to bring out, were you due east on a 90-degree bearing of Patrick or abeam Patrick?

The Witness:
I would say we were abeam Patrick.

Mr. Rivenbark:
In your letter and your previous testimony when you said "due east," you mean abeam?

The Witness:
Yes, sir, actually abeam but you can use that as a true bearing.

Mr. Rivenbark:
Patrick was 90 degrees from you in the airplane?

The Witness:
Yes, sir, off to my right.

Mr. Rivenbark:
That would be actually on a direct route as you decribed it, not due east but abeam Patrick?

The Witness:
Yes, sir.

Mr. Rivenbark:
You are 110 degrees from Patrick?

The Witness:
Yes, sir.

Mr. Rivenbark:
Did you ground speed as you figured it change materially Gateway and Miami?

The Witness:
Not too much; however, at the time I was looking at Patrick, I didn't figure, but I gave the captain an estimate Vero Beach, we were there at 6:37 and the ground speed I figured had been holding up pretty well.

Mr. Rivenbark:
Do you remember what speed you used?

The Witness:
No, sir.

Mr. Rivenbark:
When you started your descent, did your speed pick up any?

The Witness:
Indicated air speed?

Mr. Rivenbark:
Ground speed.

The Witness:
I don't know. I didn't get a ground speed check after we started the descent but I assume he would automatically increase the ground speed. I assume that when I figured my estimate it would pick up on descent.

Mr. Rivenbark:
How far would you estimate you were from Patrick Air Force Base when you went by?

The Witness:
I would say two to three miles.

Mr. Tedlock:
The ground speed at Wilmington was what?

The Witness:
225 knots.

Mr. Tedlock:
And it is apparently given the same to Gateway—

The Witness:
Yes, sir, that is right.

Mr. Tedlock:
To estimate Charleston, you used the same there?

The Witness:
Yes, sir.

Mr. Tedlock:
What is that?

The Witness:
LVL, Lawrenceville.

Mr. Tedlock:
That is all I have.
Just a moment. Where were you in relation to Coco, Florida?

The Witness:
It is north of Patrick. I didn't get a visual check on it.

Mr. Rivenbark:
As near as you can determine, you flew direct from Gateway to Vero Beach?

The Witness:
Yes, sir.

Mr. Rivenbark:
Did you get a good check at Gateway? Did you think you were reasonably close to it?

The Witness:
From all indication we were over Gateway. At Gateway your navigation isn't too accurate.

Mr. Rivenbark:
You think you went no more than five miles offshore from Patrick, two or three miles—

The Witness:
Yes, sir.

Mr. Tedlock:
It was seven minutes into Vero Beach?

The Witness:
Yes, sir.

Mr. Rivenbark:
Did you estimate that speed, did you figure what that would be?

The Witness:
No, sir.

Mr. Tedlock:
You are saying the distance you are to cover in seven minutes is the same as from Patrick Air Force Base to Vero Beach?

The Witness:
Yes. sir.

Mr. Tedlock:
Do you know how far that is?

The Witness:
No, sir, it used to be 36 miles before we changed over, about 30 or 31.

Mr. Rivenbark:
Is there anything further?

Re-Direct Examination.

(By Mr. Harlan):
Q. In flying a direct course from Gateway to Vero Beach, did you not get into the warning area?
A. Flying direct route Gateway to Vero Beach—
Q. Yes.

A. Did we not get in the warning area?

Q. Yes.

A. I don't see how we could have missed it. We went on a straight line.

Q. You did not fly a straight course and did not go by way of Barracuda-Snapper?

A. No, sir.

Q. You were in the warning area?

A. Yes, sir.

Q. Is there a regulation that prohibits that?

A. Yes, sir, it is a restricted area.

Re-Cross Examination.

(By Mr. Bennett):

Q. When you made your estimate of the arrival Vero Beach, what ground speed did your estimate include? What was your ground speed?

A. I don't know the ground speed exactly. I used my last ground speed made good between the last two check points.

Q. What was that?

A. 225 knots according to the log. I used that plus adding some for descent which increases your air speed and, therefore, wind remains the same as it was which should increase ground speed. I also used a little more ground speed thinking possibly that pulling a little more power would make the estimate 6:30.

Q. Did the captain tell you he was going to pull more power?

A. No, sir.

Q. Did he tell you where he was going to make the descent?

A. No.

Q. This is something you surmised?

A. Yes, sir.

Mr. Bennett:
Nothing further.

Mr. Harlan:
That is all.

(Witness excused.)

Thereupon GERALD CLEATUS TEW, a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Harlan):

Q. Give us your name.

A. Gerald Cleatus Tew.

Q. What is your position with Eastern Air Lines?

A. Senior radio operator.

Q. Stationed where?

A. Jacksonville.

Q. Were you on duty on February 6, 1956 when Flight 647 was making radio contact with Jacksonville?

A. Yes, sir.

Q. Do you have with you the radio contacts, copies or the originals of the radio contacts that were made that day?

A. Yes, sir.

Q. For Flight 647?

A. Yes, sir.

Q. You made some of these contacts yourself?

A. Yes, sir, I made some of them and Mrs. Scarborough, the other radio operator, made some.

Q. Mrs. Scarborough, is here?
A. Yes, sir.

Mr. Harlan:
Mr. Chariman, if nobody objects, we want to have Mr. Tew read all of the contacts into the record. Mrs. Scarborough is here and she will go on the stand to say the ones which were made by her are accurately recorded, but since one contact was made by Mr. Tew and maybe the next two by Mrs. Scarborough, we didn't think it would be a logical presentation to have each of them read the contacts which that person made.

Mr. Bennett:
I will stipulate that the contacts as he reads them would be the same as if she read them, and it would be her testimony. You don't even have to put her on the stand.

(By Mr. Harlan):
Q. Will you go through the radio contacts which you recorded in full and Mrs. Scarborough recorded with respect to Flight 647 of February 6, 1956?
A. The first contact that Jacksonville had with 647 was "47 over Wilmington, 43 at 16,000 Azalea 14 and Gateway the next estimated check point, Miami, 0715." This was 0443.
The next contact was 647 talking to Jacksonville. "We filed Wilmington direct Palm Beach Amber 7 to Miami. Find out if we going to get through that way." This was Mrs. Scarborough's contact.
Q. The first contact was by you and the second by Mrs. Scarborough?
A. Yes.
The next contact was from Jacksonville relaying an ATC message to Eastern 647. "Jacksonville ATC advises East-

ern 647 will check with Miami due to time limit so close. See if you can get through that way." This was received from Jacksonville ATC by Mrs. Scarborough and delivered to the trip at 0512.

The next contact was "Jacksonville ATC clears 647 from present position direct Barracuda, direct Maytown-Victor Three-Victor Three West-Miami. Maintain 16,000." Taken from Jacksonville ATC by Mrs. Scarborough and delivered to the trip by Mrs. Scarborough. 0515 was the time.

The next message "647's position reported over Azalea intersection. Eastern 647 over Azalea at one five VFR Gateway four eight will be going Gateway-Vero Beach Miami.

Q. Excuse me. Going back to the one before, I don't remember these very well but it looked like there were some other things there—

A. I will take up where I left off. "Eastern 647, Roger. What is the Palm Beach-Miami and Vero Beach OX. Jacksonville, Roger, 0428 Eastern for Palm Beach, 647 Roger. To this cancel IFR, proceed Gateway-Vero Beach direct Miami." This is Mrs. Scarborough's contact. That was 0515 delivered to ATC at 5:60.

I will start over on Azalea Intersection. "Azalea one five VFR Gateway four eight, going Gateway-Vero Beach-Miami, 0516," by Mrs, Scarborough.

The next one Jacksonville transmitted: "647 ATC advises they show you flight cancel IFR at 18 but have information your route will take you through warning area 158," received by Mrs. Scarborough, delivered to trip Eastern 647 "Roger. If it don't close until 0630, will be at West Palm Beach by then, but tell them will log Gateway to Snapper to Vero Beach. 0520, delivered ATC 0521." Mrs. Scarborough.

"Jacksonville transmitted to 647, Jacksonville ATC advises Eastern 647 the missile area is off Patrick and this

route will put you directly through the missile firing and also through warning area one five eight." Received from Jacksonville ATC 0521 by Mrs. Scarborough, delivered to trip. "Eastern 647, Roger. If they don't start firing before 0630 will be through it." Mrs. Scarborough received this at 0522.

The next, "Jacksonville ATC advises 647, they advised missile firing area at Patrick over your route of flight." "Eastern 647 Roger." This is my contact at 0525.

Q. Referring to that one, your position read at 0525; rather five two three, Mrs. Scarborough's—

A. The one before this one was 522.

Q. I am a little bit confused. The one says "Jacksonville ATC advises Eastern 647, they advise missle firing area at Patrick over your route of flight." Shouldn't that "of" be "on"?

A. The advise missile firing area at Patrick over your route of flight. They advise Patrick of 647.

Q. What is the time?

A. This was received from Jacksonville ATC at five two three, delivered to the trip at five two five.

Q. Go ahead.

A. "Eastern 647, tell ATC if they want to help us out, they can find out what time they plan to start firing missiles. Jacksonville Roger. Will do. Make contact. 0526." ATC advised five two eight.

The next one is also mine. The rest are by myself.

"Jacksonville ATC advises Eastern 647 they don't have a line through Patrick. They has a teletype message "keep area clear by 0630. Received from Jacksonville ATC 0528, delivered to the trip Eastern 647. Roger. Tell them we will be clear out of it by 6:30, Jacksonville, Roger, and deliver to ATC at 5:30."

"Position reported over Gateway intersection Eastern 647 Gateway four eight, DVFR. Vero Beach three zero

altitude 16,000. DVFR." Jacksonville received 0550, delivered ATC 0551, relayed to Miami Aeronautical Radio Incorporated 0551 for Miami ATC." The last contact "Eastern 647 changing altitude from 16,000 to 12,000. Estimate Miami 0755. Jacksonville zeroed back seven five five, delivered Jacksonville ATC five five six.

Q. Are those accurate records of the substance of the radio contacts with Flight 647 on that day?

A. Yes, sir.

Mr. Harlan:

Mr. Chairman, I think the best thing to do is to have this marked as Company's Exhibit No. 5, and this purports to be an official transcript of the radio contacts involving Flight 647 of February 6, 1956. I would like to have it marked now as Company's Exhibit No. 5.

(Thereupon the document was marked as Company's Exhibit No. 5.)

Mr. Harlan:

I might state for the record that this is the transcript from which Mr. Shannon was reading yesterday; he read part of it. Prior to the hearing today, I asked Mr. Tew to read this. I would like to show it to him now and ask him if that accurately states the contacts to the extent that you particiupated in them?

The Witness:

Yes, sir.

Mr. Harlan:

That is all. I do want to call Mrs. Scarborough for two or three questions.

Mr. Bennett:
I have no questions.

Mr. Rivenbark:
Did you know who the captain was on that?

The Witness:
Yes.

Mr. Rivenbark:
How did you know?

The Witness:
I knew by his voice.

Mr. Harlan:
The contacts were with the captain?

The Witness:
My contacts were with the exception of his Wilmington position report.

Mr. Harlan:
That is all.

(Witness excused.)

Thereupon: ADDIE B. SCARBOROUGH, a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Harlan):
Q. Please state your name.
A. Addie B. Scarborough.

Q. What is your position with Eastern Air Lines?

A. A radio operator.

Q. Stationed in Jacksonville?

A. That is right.

Q. You have heard Mr. Tew's testimony. Is that testimony accurate insofar as it affects you?

A. That is right, the contacts that he read.

Q. Those contacts that you made that he read are accurate recordings of what happened?

A. That is right.

Q. Prior to the hearing this morning I showed you this document which has been marked as Company's Exhibit No. 5, did I not?

A. That is right. I read this this morning.

Q. You read that?

A. Yes.

Q. Is that an accurate recording of the radio contacts in which you participated with respects to Flight 647 on February 6, 1956?

A. That is right, the one there between Miami Center and Jacksonville Center we had nothing to do with. We don't know—

Q. So far as contacts with Eastern's Jacksonville radio and with Jacksonville ARTCC?

A. That is right.

Q. That is an accurate recording of what went on?

A. Yes.

Mr. Harlan:

I would like to offer Company's Exhibit No. 5 in evidence.

Mr. Bennett:

I am not sure what this is. Certainly the contacts made with the aircraft by Jacksonville or Miami or any one

radio or company is perfectly competent here, and I think those were read into the record. Conversations had between two radio operators on the ground unbeknowns to the captain of the flight, no matter what they might contain, are not probative of anything in this case, and I think it would be incompetent as evidence to show anything with respect to Mr. Woolley. If I understand this correctly, what we have here in the exhibit, which is being offered, is conversations had between the ground radio people and wasn't overheard by Mr. Woolley, and was not relayed to him. He didn't know what was going on. He didn't have any idea what the contents of it was. Maybe if they relayed the messages to him, we would have an entirely different situation, maybe, and so I say this is not competent to show anything with respect to Mr. Woolley and I object to its introduction.

Mr. Harlan:

Our position is it shows the exact information was available and which was transmitted to Flight 647. As I understand, the way the radio operators work, they could not keep a verbatim account of everything which is transmitted, that these contacts they have recorded are simply the substance of what was said.

Here we have exactly the information which was furnished to Eastern by ARTCC and which was transmitted to the flight.

May I ask Mrs. Scarborough, my statement is correct, you do not keep a verbatim record of what is said?

The Witness:

As nearly as possible, it is kept that way. There are times when conversation is going too fast to keep exactly what it is. Information from ATC is verbatim. It is exactly as they give it. In cases of a clearance, it is exactly as they give.

Mr. Rivenbark:

We will have a five minutes recess.

(After a short recess, the hearing proceeded as follows:)

Mr. Rivenbark:

In line with the present line af questioning, the Board rules that conversation between Jacksonville radio operators and Jacksonville's ATC and other persons on the ground is not admissible at this time.

Mr. Bennett:

No questions.

(Witness excused.)

Mr. Harlan:

I would like to have marked as Company's Exhibit No. 6, the chart of the Boston Airport. It is identified in the upper left-hand corner as "Instrument Approach Chart LF Range ILS, LOM ADF," and in the lower right-hand corner it is dated January 27, 1956. Someone has written in ink it was obsolete March 7, 1956. I understand this is the chart which was in effect at the time and is taken—

Mr. Tedlock:

What was the time of the approach up there?

Mr. Harlan:

It became obsolete March 7th and the flight was in February. I thought it might be helpful to have this in the record for reference.

Mr. Bennett:
No objections.

(Thereupon the document was marked as Company's Exhibit No. 6.)

Mr. Rivenbark:
Might I suggest it might be appropriate to have lunch now.

(Thereupon the hearing in the above entitled matter was recessed until 1:00 o'clcok P.M. of the same day.)

Afternoon Session.

Mr. Rivenbark:
Proceed.

Thereupon: L. H. DICE, a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Harlan):
Q. Please state your name.
A. L. H. Dice.
Q. What is your position with Eastern Air Lines?
A. A check pilot.
Q. You are based in Miami?
A. Yes, sir.
Q. Yesterday Mr. Shannon referred to a memorandum of yours dated June 8, 1956, written to Captain G. C. Diggs. Is that a copy of a memorandum which you wrote?

A. That is a copy.

Mr. Harlan:

I would like to have a copy of that marked as Company's Exhibit No. 7.

(Thereupon the document was marked as Company's Exhibit No. 7.)

(By Mr. Harlan):

Q. Are the facts set out in that memorandum of June 8, 1955, true and correct?

A. Yes.

Q. Would you tell us about the circumstances under which you wrote that memorandum?

Mr. Bennett:

I have the same objection to this testimony as to the testimony of incidences other than those described in Mr. Shannon's letter which brought about the charge, and we are back at that same problem.

There was no specific charge made against Mr. Woolley with respect to this incident and there was no notice to Mr. Woolley he would be confronted with any such factual situation as he seeks to put into the record at this point, and I object to it upon that ground.

Mr. Harlan:

I don't think we should go through all the argument again. This particular matter is in the same category as the Burstrom memorandum and testimony, and I assume that the Board would rule the same on this as it ruled on the Burstrom memorandum.

Mr. Bennett:

I think the Board's ruling in that instance was that the evidence would be permitted to go into the record, and if the Board got over the first hurdle, then the Board would not contemplate this evidence until and unless they had received citations of authority to the effect unless he was specifically charged with these items, but it would not be contemplated as part of the case which would bring about his dismissal.

Mr. Rivenbark:

The Board will rule in this evidence as in the Burstrom testimony, that it will be admissible only to support Mr. Shannon's motivation in accepting the resignation, but it will not at this time be admissible as evidence for discharge.

(By Mr. Harlan):

Q. With that understanding, will you proceed to tell us how you happened to write this memorandum?

A. I wrote it in connection with my job as check pilot as a result of observation made on the particular flight cited there.

Mr. Harlan:

That is all.

Cross Examination.

(By Mr. Bennett):

Q. How long have you been a pilot?

A. A pilot?

Q. Yes, sir.

A. Since 1925.

Q. How many hours flight time roughly do you have to your credit?

A. Over 20,000.

Q. You have been an employee of Eastern Air Lines for how many years?

A. Next month it will be 23.

Q. You have flown with Mr. Woolley on many occasions, I imagine, as a check pilot and otherwise?

A. I wouldn't say many, but on several. I flew with him as a copilot for a while after he got out of the Army following the war. We were required at that time to fly as copilot, those were on active duty, for a period of a month before taking up a captain again and I flew as copilot on several, one or more trips with Woolley then and later on I have flown with him and given him instruction rides and instrument checks and rating.

Q. Do you regard Mr. Woolley as a good pilot?

A. I have regarded Mr. Woolley as a good pilot, yes.

Q. Would you say he was only an average pilot, or would you say he has a natural talent for flying a plane?

A. I am not qualified to make a statement along those lines.

Q. Did you tell Mr. Woolley about your observations on June 2, 1955 with respect to the engines?

A. I waited until the other crew members were out of the airplane intentionally so that we could talk frankly, man to man, and in as nice a manner as I could, as I am capable of. I talked to him about the one specific instance cutting the two engines and asked him why he could not conform to the procedures which had been established by the best brains in the Operations Department of Eastern Air Lines, and he got very indignant and accused me of being a lint picker. I said if you feel I am picking lint, I might as well call to your attention a couple of other discrepancies on this same flight which I did, and that is it.

Q. What did he do that was not just in accordance with the regulations or rules of the Company?

A. He stopped the first and fourth engines.

Q. What should he have done?

A. He should have stopped number one engine only, and he was well aware beforehand that was the standard procedure.

Q. Did he tell you that?

A. That he was aware of it?

Q. Yes.

A. At that time?

Q. Yes.

A. I don't know whether he did or not but I knew he was aware of it because I know of cases, which I cannot cite right now, where it had been called to his attention prior to this time by other check pilots.

Q. Do you think this was an infraction of the rules or a very significant thing for a pilot to do?

A. No, I didn't think it was a very significant thing except that I thought it should be brought to his attention. No more was expected of him in compliance with rules that the Company and the CAA adopted than to anybody else.

Q. Did you ever crack up an airplane?

A. Did I ever crack up an airplane?

Q. Yes.

A. My whole flying career on an air line or what?

Q. You tell me.

A. Yes, I have been in a crack-up.

Q. Isn't it a fact in 1955 in Tampa, you flew an airplane in and blew out all the tires on it?

A. No.

Q. It didn't happen?

A. No.

Q. Did you have any untoward happening with an airplane in 1955 at Tampa?

A. I had a flat tire at Tampa. I think it was 1955.

Q. How did the flat tire come about? It had a puncture?

A. It was flat-spotted and got flat because the tire wore off from the application of the brakes.

Q. You made application of the brakes and blew a tire?

A. That is right, a perfectly normal operation.

Q. Did the same thing happen to you in Chicago around 1954 or 1955?

A. I don't recall whether I had one in Chicago.

Q. You may have had?

A. I may have had. I had one in Indianapolis, if that is any advantage to you to know that.

Q. Didn't you also fly a plane in the Potomac River on one occasion?

A. Am I up here to be discredited?

Q. You are acting as an expert as to what people should do with airplanes, and I am trying to find out if you are a real expert.

A. That is right, I did.

Q. Did you lose control of an airplane in Indianapolis and let it meander off of the runway?

A. I went off the runway making a turn in Indianapolis in an icy condition following an engine failure and a successful landing.

Q. Did you ever land short of a runway?

A. I don't recall having done so.

Q. Might you have done so?

A. It could be.

Q. You don't recall it?

A. No.

Q. These things that have happened to you could happen to any pilot?

A. Surely; at no time have I set myself up as being the finest pilot in Eastern Air Lines or any group.

Q. By the same token, a pilot cold have a lapse and cut off two engines on a taxing-in that he shouldn't do, isn't that true?

A. Could have a lapse?

Q. He could shut off two engines he is not supposed to shut off when he is taxing-in?

A. He could do it.

Q. In the same fashion that is different as occurred to you

A. I don't quite get what you mean in that respect.

Q. In the putting on of the brakes and blowing of tires or the putting of the airplane in the Potomac River, or losing control of a plane and permitting it to go off the runway, those things weren't things you did deliberately?

A. No.

Q. Would you say in each of those instances they were beyond your control and another pilot flying would have done the same thing?

A. I think so.

Q. They were completely beyond your control?

A. I think so.

Q. Those things that occurred even to the putting on of the brakes and the blowing of tires

A. That was a perfectly normal proposition, a normal amount of breaking and everylthing else. A normal amount of the technique I employed in stopping the airplane, I don't think could be critized by anybody.

Q. Except the tire blew?

A. Yes.

Q. The point I am trying to make and what I am trying to get you to say to me if it is true, is that it isn't a Federal case that a pilot would shut off two wrong engines?

A. I didn't make any big deal about it.

Q. You put this in the file.

A. I did after the person-to-person encounter we had in which he was very upset and angry that I called it to his attention at all, and I informed him that even though I wasn't riding a check pilot with him, if I was any good as a pilot, I was to call attention to anybody, call their attention to any discrepancy I observed.

Q. Did you do that?

A. Yes.

Q. Now, do I understand you to mean this report put in Mr. Woolley's file was a result of your anger?

A. No, not a bit.

Q. His anger?

A. It never would have gone up if he had not gotton so angry about the fact that I called his attention to it.

Q. This report was made because you were—of the anger that was aroused?

A. No, it wasn't a case of anger. It was a case of having knowledge that the same thing had been brought to his attention on other occasions, and I felt constrained to do the same and inasmuch as he had even—well, inasmuch as he hadn't talked to me at the time I got out of the airplane, I thought I had better put it on the record. I figured he had no intention of complying or going along with suggestions made by myself and other check pilots.

Q. What suggestions were made by other pilots?

A. Speaking specifically of this matter of cutting one and four instead of number one, which is the known procedure.

Q. I am not sure I understand you. To your knowledge had Mr. Woolley been guilty of this on other occasions that had been called to his attention?

A. I can't document it, no.

Q. It was the general information given to all the pilots that they should cut only one engine that you speak about he should have known?

A. That is correct.

Mr. Bennett:

Nothing further.

Re-Direct Examination.

(By Mr. Harlan):

Q. Referring to these incidences that Mr. Bennett brought up involving you, such as flat tires and so forth, did any of those incidences occur to the best of your knowledge and belief, because of your failure to follow procedures established for the safety of passengers?

A. I don' think so.

Mr. Harlan:

That is all.

Mr. Bennett:

Nothing further.

(Witness excused.)

Mr. Harlan:

That completes our presentations.

Mr. Bennett:

Mr. Woolley, will you take the stand, please.

Thereupon: PAUL S. WOOLLEY, a witness of lawful age, having been previously sworn, was recalled and resumed the stand and was examined and testified as follows:

Re-Direct Examination.

(By Mr. Bennett):

Q. You are the same Mr. Woolley who testified here before?

A. I am.

Q. You are the Mr. Woolley who is the subject of the discharge case here?

A. I am.

Q. When this trip, on which, the trip you made February 5th—6, 1944, with copilot Hughes, did Mr. Hughes make out the flight plan when you left Miami?

A. He did not.

Q. Did Mr. Hughes present himself to check the weather with you in Miami?

A. He did not.

Q. Is it a rule and custom of the copilots to do these two things?

A. It is a rule and it is the usual custom.

Q. Did the same thing occur in Boston on your way back, 647?

A. To an extent, yes.

Q. To what extent?

A. In Miami the difference being the first time I saw Hughes was when he presented himself downstairs as I was signing the clearance. The weather is checked upstairs in the weather bureau and the flight plan is made out in the dispatch office.

In Boston the difference is that Hughes was present in the room. However, he had nothing to do with my mak-

ing out the flight plan. We did not check the weather together.

Q. As far as you know, Mr. Hughes did not check the weather at all on the trip out of Miami?

A. That is correct.

Q. You have read the letter, have you not, that Mr. Hughes felt obligated in the interest of safety to write to the Company with respect to trip 644, did you not?

A. I can't say I have read it myself. However, I was in the room when it was read and listened to it.

Q. Will you tell the Board in your own words what occurred in the approach—how the approach was made and what occurred in the approach to Boston on 644 of February 5, 1956?

A. I will try to go through that. It might get a little bit involved but I hope the Board will bear with me.

As has been said, the flight into and out of Washington was normal, and until we arrived in the vicinity of Boston, it was normal.

Now I would like to go back and say this, when I checked the weather in Miami, Boston was very marginal. In talking with the dispatcher at that time, it was agreed between us that it was a very strong possibility we would not get into Boston, and the flight was approached accordingly. The weather was again checked in Washington with the thought in mind that the strong possibility still existed that we would not get into Boston, and I do not recall the exact weather in Washington, but I do recall that from Miami and up until the time we had left Washington, they had been reporting intermittent sleet, freezing rain and snow with quite a bit of snow.

The last weather report I had before reaching the vicinity of Boston was the radio report somewhere after passing over Idlewild. This being the last radio report I could do anything with. I was rather amazed that they had quit sending either sleet, snow or freezing rain.

My idea was that it was practically impossible that this condition had existed up until the time of this last weather report, and now suddenly did not exist. However, I entertained the thought myself at this time that the weather man is probably giving me a shot at it, which as everyone in the room knows is occasionally done and by—I will explain what I mean by giving me a shot at it, by saying that he left off any freezing rain or sleet indication.

If freezing rain or sleet had been on the weather report I would not have been allowed to land in Boston, so with this in mind, I proceeded on to Boston on top of a cloud deck. The altitude on top of the cloud deck, I wasn't able to ascertain at this time due to the fact that I was flying at a high altitude.

Somewhere before reaching Boston and after we had received our clearance to descend to about four thousand feet, I checked with Boston ATC and requested I be cleared over to aproach control. Boston ATC checked for any possible aricraft in the vicintiy and informed me that there were no other aircraft in the vicinity with the exception of an American Air Lines trip that was northbound at that time but would not in any way be traffic for me, and cleared me, and cleared me to Boston Approach Control. I asked Boston Approach Control if it would be possible for me to be cleared in direct in the localizer from any point that I desired to enter the localizer. They ran this through and came around with the answer "yes, that would be okay." Then I asked them again "are there any aircraft in the vicinity who might be traffic for me and would I be free to act in any way I desired?" And they said "no, you are the only airplane we know of around here tonight." So with this information, I planned an approach in my mind. This approach was planned predicated on the fact that immediately after

entering the cloud layer, I would expect to accumulate a certain amount of ice on my airplane. How much, I had no idea, but I did know from past exeperience that it might be considerable.

I would like to make a statement that I have flown Super C Constellations in icy conditions before. I know how they act and I know that they are very hard to control. Therefore, with this thought still in mind, I desired the best procedure possible which would be to get on the localizer as far as I could, make a direct approach into Boston with as much speed as I could on the airplane in order to keep control of it and above any stalling point it might have. Also at this time I requested that the NESA windshield heater be turned on. This was done. With the NESA windshield heater on, there was no way for me to tell whether I had any ice on the airplane or not with the possible exception that I could turn on the wing lights and maybe see ice accumulating on the de-icer boots. However, this would be impossible during this approach due to the fact that I would be too busy at the time to even think of trying to check that, which is not a very good check anyway. I proceeded along those lines and we began to get closer and closer to Boston and there began to be a certain amount of indecision in the cockpit. This was maybe on my part as well as the rest of the people in the airplane, the rest of the people in the cockpit. This indecision came about due to the fact that by bearing right to get on the localizer as far out as possible, we did not receive a definite signal on the Franklin marker. Not having a definite signal on the Franklin marker, there was no way of absolutely proving we were over the Franklin marker, although our estimate was rather accurate. So this indecision on my part caused me to double-check myself and by double-checking myself, I mean that after I did

receive a definiite check on a marker, I was not positive that it was dedum. I was pretty sure it was dedum. During all this time I had never entered the cloud deck. I was still on top of the cloud deck and I stayed on top for the definite purpose if I could delay the descent into the cloud deck as long as possible, I would not accumulate too much ice and it would be a safe landing.

In doing this, we came upon Boston, shall I put it, before we actually expected we might come upon Boston and the happenings at that time in pretty much sequence were that I had the localizer on. I was on the localizer path. I was also on the glide path. I was around four thousand feet and I had not received the Franklin marker but I was receiving a marker which I thought was dedum and at this time without my knowledge at all, the copilot reached up and turned off the Boston omni which I was using, turned it to some other omni frequency which I didn't know anything about, and at the same time, that is such and such and omni, and at the time I didn't understand what omni he was saying, but he told me "we are passed Franklin," and I said "I believe we are, too." "I am sure that is the dedum marker." I did not communicate my intentions to him for the simple reason that I was too busy thinking them out myself. Now, putting on the localizer and being on the glide path somewhere between three thousand and four thousand feet. I was thisking at the time that I can just descend on the glide path. That is okay and then the thought occurred to me, no. that would not be right for the simple reason that there are multiples of the glide path. You can rise over the outer marker at several different altitudes up to and including five thousand feet and still be right on the glide path, so with this thought in mind, I said to myself, "Woolley, you had better take it easy on this one, kid, wait 'till you get to the outer marker before you make a

move." So, about this time the outer marker started coming up. In other words, we began to get the outer marker signal and practically instantaneously after we began to get the outer marker signal, the needle began to revolve. At this time I had picked up the microphone and called approach control and said "am I still cleared to land?" They said "yes." I said "I don't think I can make it. I am about three thousand feet over the outer marker. I want to make a quick 350 and land. Will I be traffic or will there be traffic?" They informed me "no other airplane in the area. I could make the landing any way I desired." The minute they told me that, I automatically made a turn. It happens this was a left turn. I made a 360, descending all the time and tried to arrive back over the outer marker in position to intersect the localizer and proceed with my descent into the Boston Airport.

I would like to go back over that and add something. During this time, a conversation was had with the approach control as to what runway would be desirable to use and, I believe, they did tell me that the wind was mostly on 33, and I requested runway 4, I believe it is. In other words, I requested the northeast runway, the localizer runway. This was granted and picking up air, I left off in this turn. There is a strong possibility that it was a rather rough and you might call "unwieldy" descent due to the fact that immediately upon entering the cloud deck, we picked up quite a lot of ice, I am sure, because that is the way the plane acted to me and I was very busy trying to handle the airplane making the 350 descent to 15 hundred feet, get back over the outer marker all in due sequence.

Coming back over the outer marker wasn't actually accomplished. However, this maneuver was accomplished to my satisfaction that there was no danger involved in hitting any obstruction. I came back up close enough

to the outer marker to determine for myself that I could get on the localizer before I got to the inner marker.

I continued the descent to approximately 600 feet, because between the outer marker and the inner marker, 600 feet is a safe altitude. Somewhere around 700 feet, I was informed I was below the glide path and to the left of the localizer, which I already knew. I proceeded on in but leveled off at 500 feet to be definitely in a safe altitude over the inner marker and to clear any obstruction that might be in my way.

I was pretty sure where I was all the time but actually I wasn't positive. I wasn't far enough away from the localizer to hit any obstruction at 500 feet. During this procedure inbound, I worked into the localizer all the time. In other words, my airplane had a direction towards the omni receiver on the Boston Airport, which directed me towards the localizer path at all times. By the time I approached the inner marker, the localizer needle had moved from the outer segment almost into the inner segment, which showed me I was still to the left but not too far to descend to 400 feet. I started to descend to 400 feet at this time, due to the fact at 500 feet I was picking up light, and when I say I was picking up light, that meant I was getting close to contact. I know this from experience. As I began this descent, I was again informed I was below the glide path and to the left of the marker. It had entered my mind there might be a possibility I would have to abandon this approach and make a pull-out. However, at 450 feet, we broke contact and at 400 feet we were definitely in the clear, and everything was safe and I went ahead and proceeded into a landing on the field.

After landing, it was ascertained by me that there was definitely an accumulation of ice and snow on the runway at this time, and caution in taxing into the ramp was

made due to this fact. After we arrived in the ramp, several passengers commented to me to this effect, "that was a wonderful trip; thank you for getting us into Boston. We had thought we would not get in." I okayed that and thanked them and went on.

Q. Do you as captain in command of an aircraft permit alternate landings by the copilot?

A. Normally I do.

Q. Was this a landing that was in the ordinary things, the copilot landing?

A. Ordinarily it would have been.

Q. But you took this landing yourself?

A. I took this landing myself, yes.

Q. Mr. Hughes, the copilot, described your left turn thus, he says "that the captan immediately put the plane into a screaming, diving 45-degree banked turn and descended 1,000 feet." Would you describe the turn that you made in any such terms?

A. I couldn't describe—

Mr. Harlan:

Did he say "descended to 1,000 feet?"

Mr. Bennett:

Yes, to 1,000 feet.

(By Mr. Bennett):

Q. Do you recall the altitude at which this turn came out

A. I do not.

Q. Was it above 1,000 feet?

A. I am sure it must have been and I will have to explain that statement by saying that we were in a turn most of the way from the center marker to the inner marker, and being in a turn, in other words, we were—

strike that. I would like to requalify that. What I meant to say was that this turn being what it was and being a descending turn, descent was made at a certain rate from the time we began the descent until we arrived more or less at a point somewhere half way between the inner marker and the outer marker.

We were in a normal rate of descent until that time.

Q. The descent that was accomplished in the turn was no more than normal?

A. I would say it was normal. Under the circumstances, it was normal, the circumstances being ice on the aircraft and therefore a definite rate of descent could not be accomplished.

Q. In other words, this was not the best 360 you ever accomplished?

A. It wasn't by any means.

Q. Would you describe this 360 as a tight turn?

A. It was a fairly tight turn, yes.

Q. What was the rate of banking, as you recall, 45 degrees?

A. It could have been but I don't think so.

A. In your judgment as captain, the turn that was made, the degree of bank and radius was a necessity under the circumstances?

A. It was a distinct necessity under the circumstances.

Q. Mr. Hughes said when you broke out, you were to the left of the course which is true, is that right?

A. That is true; may I add that when I broke out, I recognized that I was practically over the Navy Yard or, that is, over that portion of the Navy Yard which extends out over the localizer path. In other words, you go right in over the Navy Yard on these landings and I was over that portion which extends over the glide path. I recognized that portion.

Q. He states there were smoke stacks directly in front of you. Is that true?

A. Not to my knowledge.

Q. Are you familiar with the fact that there are smoke stacks to the left of the localizer?

A. I am familiar with that fact, yes.

Q. Were you at such an altitude as would endanger the flight from those smoke stacks?

A. No.

Q. From the time you broke out and until you put the plane on the runway, did you encounter any difficulty in doing that?

A. May I qualify "difficulty," by saying this was not the hardest approach I ever made in my life, but it wasn't the easiest one, by any means.

Q. Did the copilot have anything to say to you when the plane—when the trip was over?

A. Nothing; I might add I overheard a conversation between the copilot and the engineer in the cab ride to town but what it was, I don't know.

Q. On your trip back the following day, you heard the testimony and read the letter of Mr. Hughes with respect to your clearances and what not from Gateway and down through Vero Beach. Will you tell the Board in your own way what occurred and why, with respect to that portion of this trip?

A. May I have the radio contacts before me at this time? May I have the radio contacts which are part of the exhibits?

As far as I am able to ascertain, this flight is routine until we reach Wilmington; therefore, I will proceed from Wilmington. I flew this airplane practically all the way from Boston to Wilmington myself. At Wilmington or approximately at Wilmington, I turned it over to the copilot as I had some business back in the cabin

of the airplane. I do not exactly know how long I stayed back there but it was a fairly short time.

When I came back to the cockpit, I understood the copilot to tell me there was a possibility that we would be recleared after Gateway. I made no comment to him at this time, although I did think this matter over very considerably before reaching a decision. I called Jacksonville on the radio and asked them "how about this possibility that we would not be able to proceed direct to Palm Beach?"

They came back and told me that my time limit was going to be very close, but they would see if they could squeeze me through. I waited for a while and then they came back and said "Jacksonville ATC clears Eastern 647 from present position direct Barracuda, direct Maytown—Victor -Three-Victor (Illegible) -W-Miami." I advised them at this time that Flight 647 would probably be proceeding Azalea VFR Gateway, and also Gateway-Vero Beach-Miami.

They advised me that should our flight continue, oh, they advised me that they showed our flight as canceled IFR at 18, but for my information, "your route will take you through warning area one five eight." I knew where warning area one five eight was, and I had no intention of flying through there so I told them that I would fly Gateway-Snapper Beach.

After a lot of conversation on this point one way or another, they finally came back and told me that ATC accepted DVFR clearance Gateway-Snapper-Vero Beach, but that there might be some danger in flying this way. So I asked them to re-check and definitely assure me what time the Army wanted me out of this area. They re-checked, they came back and told me that the time was 0630, so I okayed this proposition and told them again my flight plan would be DVFR Gateway-Snapper-Vero Beach.

About this time we came up over--I am not positive of this statement so I can't say exactly where we were along about this time. I do know that in the interim of making this decision and this radio conversation that I did contact Jacksonville and definitely ascertained that the weather was VFR at Vero Beach, at Palm Beach and at Miami.

At the time we were flying over a cloud which appeared to be in the neighborhood of 8,000 to 10,000 feet on (Illegible) proceeding on this course orderly checks were made at Azalea and Gateway. Upon arriving at Gateway, I checked thoroughly in my own mind that I would be able to get to Vero Beach by six thirty. So I continued on my own flight plan.

The flight was definitely flown over Snapper because I kept the Snapper checks which I used as two seven zero degress on Orlando. I kept them omni on Orlando until after passing Snapper to be sure I would be over Snapper. Then it was flown inland towards Vero Beach. At 6:30 I was over the City of Vero Beach definitely. I contacted Jacksonville radio giving them the usual that I was VFR over Vero Beach, my VFR meaning to me that is was a visual check over the City of Vero Beach.

At 6:32 by my clock, the needle swung on the Vero Beach omni. Now, this is easily seen when you realize that the City of Vero Beach is northeast over the Vero Beach omni. The flight proceeded from there on in the normal pattern, checking being made at Bell Glade, mainly to ascertain the Kollsman at Miami, and from there on in, we definitely--the flight proceeded without incident.

I would like to go back and make one statement now. When it was ascertained I was going to fly a course that I have stated, the copilot told me that he had called Miami and reestimated some 30 minutes later than we had estimated at Wilmington. I did not check this with

Miami as I took him at his word. However at some time—I cannot find the radio message, although I know it is here—that sometimes around Vero Beach, I re-estimated Miami at 0705. Ramp time at Miami was 0707. The estimated, the original time estimate to Miami over Wilmington was 0715. When the copilot told me he had added some 30 minutes to this due to the fact that we would have to go Barracuda-Maytown, that caused me to re-estimate 0705, because I knew that this estimate would not hold.

The only intention I had in doing what I did was to get the flight out of the area on the time specified, and also save as much time between Gateway and Miami as it was safely possible to do so.

Q. I believe, Mr. Woolley, you told us that the radio contact with Jacksonville had told you that the course you were going to take would take you over warning area one five eight?

A. That is what they told me.

Q. You realized and recognized that this wouldn't be possible the way you were going?

A. That is right.

Q. Didn't Mr. Hughes testify that at 0630 you were east of or abeam of Patrick Air Force Base; is that true?

A. That is not true, as far as I am concerned. In other words—

Q. Let us say it another way. Could it have been true?

A. I think it was impossible.

Q. Do you know it was impossible?

A. I am practically sure it was impossible. In fact, I think I can prove it was impossible.

Q. I am interested in finding out from you if it was true or not.

A. I have proven to my own satisfaction it was impossible and is not true.

Q. You mean to say it isn't true?

A. I say it isn't true.

Q. Mr. Hughes also said that you went direct from Gateway-Vero Beach and that would imply that you did not fly over Snapper. Is that true?

A. That is not true.

Q. Did I understand you to say that one time at Wilmington, Mr. Hughes, estimated Miami at 0715?

A. You did.

Q. What time did you arrive at Miami?

A. We arrived at the ramp at 0707. This would put us on the ground sometime around 0705.

Q. With respect to this warning area off Patrick Air Force Base, and assuming that you would be out of the area at 0630, as they informed you, was there any rule or regulation that would permit your flying the DVFR that you did fly?

A. I know of no such rule or regulation.

Q. This is permissible under the regulations, as far as you know?

A. It is—

Q. Where did you get this information?

A. I get this information out of my range manual, the Airways Chart Manual.

Q. I show you the Airways Chart Manual and ask you to state if that is the source of the information and your knowledge of the correctness of your flying DVFR in the fashion in which you flew it?

A. That is.

Q. What have you reference to?

A. I have specific reference to a paragraph—

Q. What are you reading from?

A. From a Department of Commerce Geodedic Survey, Washington 25, D. C.

Q. This book from which you are reading is a book or document furnished you by your Company?

A. It is.

Q. And put into your manual for your information and guidance?

A. That is right.

Q. You are reading from what paragraph in that document?

A. From the fourth paragraph.

Q. Read what it says in there.

A. "A restricted area (formerly called danger area) is an area in which there is a hazard, usually invisible, to flight or navigation such as aerial gunnery, guided missile, artillery, or other type firing. Permission must be granted to a flight before it may traverse an area during those periods when it is live or in use." Live is in quotation. "A restricted area is effective at various times between various altitudes,—time of use and controlling agencies may be found on the radio facility charts and other aeronautical charts."

Q. The information which the Company furnished you, was that only when the area was live; were you required to get special permission to fly an airway that ran through it?

A. That is my understanding.

Q. Was it also your understanding that so long as you are out of this area and you made certain that you were within the time required, and before the area became "live," that this was perfectly permissible?

A. It was.

Q. I believe when you left Wilmington you were on an IFR plan?

A. That is true.

Q. When you received this re-clearance, Barracuda-Maytown-Vero Beach, you decided that if you were required to go that way, you would be in the air considerable time longer than your original clearance?

A. That is true.

Q. And that means money to your Company?

A. It does, definitely.

Q. You decided if it were possible to go a more direct route legally, that this would be a better route to take?

A. Due to the saving that the Company would effect by this procedure.

Q. And so you canceled your IFR?

A. I did.

Q. When you canceled your IFR, this was a prerogative that you have as a captain of an airplane?

A. It was.

Q. You had a perfectly legal right to do so?

A. It was my understanding.

Q. By so doing, you didn't violate any rule or regulation or law you know of?

A. I was sure I wasn't violating any law.

Q. From that point on you flew VFR?

A. DVFR.

Q. In informing the ATC and your Company you would fly from the balance of your trip to Vero Beach DVFR, this was also a preogative of yours as captain of the airplane?

A. That is true.

Q. And doing that, notwithstanding that the area would be closed at 0630, this was perfectly permissible?

A. Yes.

Q. It violated no rule or regulation?

A. I knew of no such rule.

Q. The only thing you did know was the area would be closed at 6:30 and you would have to be out of it?

A. That was my understanding.

Q. Did you know that Patrick Air Force Base has rectors in the area, too?

A. I had heard it rumored.

Q. I believe you had estimated Vero Beach at three zero?

A. That is true.

Q. And accordnng to your estimate and your instruments, you were over Vero Beach at three zero?

A. That is true.

Q. Your copilot, as you heard him testify today, said you were not there, that you were short of Vero Beach and it took seven minutes more to get there and you were there at 6:37?

A. I understand he made that statement, yes.

Q. Was your aircraft late into Miami by seven minutes?

A. No.

Q. Were you on time in Miami?

A. By my estimate, yes.

Q. Let's get at it this way. If his actual time over Vero Beach is right, three seven, you would have seven minutes—you would have been seven minutes earlier in Miami, wouldn't you, 37 minutes late?

A. Seven minutes later.

Q. Did you cut the power back or slow down the airplane—did you take the power off or fly at a slower rate between Vero Beach and Miami than ordinarily?

A. I didn't change the power setting at all and actually if we had turned the power off—

Q. I asked you if you did?

A. I did not.

Q. Did you add power in order to try to make up those seven minutes?

A. I did not.

Q. Where did those seven minutes go?

A. You have got me there, I don't know.

Q. The seven minutes didn't go anywhere because you were not over Vero Beach at three seven.

A. That is what I would have to say.

Q. Going back to your approach to Boston, I believe you stated in the midst of a very difficlult approach, or one that was somewhat out of the ordinary, at least, copilot Hughes reached up and without any warning and without any notice to you, took away one of your omnis that you were using in the approach?

A. That is true.

Q. Is this customary for a copilot to do that?

A. I don't believe I ever had that happen to me before.

Q. Did you do anything about it when he took it away? Did you do anything about it? Did you bring it to his attention?

A. No, I didnt berate him. I said nothing about it.

Q. Did you take it and put it back on the omni you were using?

A. Yes.

Q. As quickly as you could?

A. As quickly as possible.

Q. Do you recall what omni that was? Was it right at the runway?

A. It was the Boston omni located almost on the northwest runway one three three off to the right.

Q. Was that facility being very helpful to you in making the approach?

A. Exceedingly so.

Q. It was when he took the omni away without, or removed this one omni without any warning to you that this confusion took place you spoke about?

A. That is true, due to the fact that high frequency reception is very poor under icing conditions. VHF re-

ception is not appreciably affected, the high frequency being set on the outer marker and that is the reason I make this statement.

Q. Has the Civil Aeronautics Authorities contacted you with any criticisms of your approach to Boston under this—of the flight through Gateway-Vero Beach?

A. They have not.

Q. You have not received any indication from them that you are charged with anything?

A. No, I have not.

Q. You are still a fully qualified pilot in every regard? You have your ticket unrestricted in any regard?

A. I believe I am fully qualified with the possible exception of the airplane 90-day qualification, which means you have to have a landing in 90 days in each type aircraft.

Q. You have all the certifications necessary for a commercial air line pilot?

A. I have.

Q. Have you anything to add to what has already been said with respect to either of these two instances?

A. I would like to add one thing. I do not believe I brought out the fact between Gateway and Vero Beach I did descend from 16,000 to 12,000 feet. This is noted by a radio conversation with Jacksonville.

In other words, on a DVFR flight plan, you are requested at any time you change altitudes to notify the Company. They were notified and that is in the record. We crossed Vero Beach at 12,000. Might I add at this time, in explanation of my action in making the landing in Boston, and possibly not confiding in the copilot my intentions, during any part of the flight when he thought I might have confided in him, this was possibly due to the fact I could feel a definite resentment on his part. I did not at the time let this influence me in any way and have

not since let this influence me in any way. I have made it a practice not to write up copilots if I could possibly help it, and although I had the role of check pilot at one time and had to ride herd on a copilot, I did specify at the end of that riding herd as far as I was concerned, this was not a competent pilot, but I would not judge and I felt like before anything was done, this copilot should have been given an opportunity to ride with at least three of the senior captains for a certain length of time before the Company made up their mind what they were going to do with him.

Mr. Bennett:
That is all.

Re-Cross Examination.

(By Mr. Harlan):

Q. With respect to the last statement, did you say you were a check pilot at one time?

A. I was a designated check pilot. We didn't have check pilots in those days.

Q. When was that?

A. When I was based in Birmingham.

Q. How long ago?

A. I will have to get the records to check it. I don't know the exact date.

Q. Approximately?

A. That was around 1940 or 1941; approximately those dates. I can't be tied down.

Q. It wasn't an official title but something you did?

A. Something the Company requested me to do and I did.

Q. You have given us a pretty complete account of this flight into Boston, 644 of February 5th, and to try

to tie down some of the points I want to try to find out, how far apart you and Mr. Hughes actually are on some of these facts. He says you turned to the left. There is no disagreement about that?

A. No, disagreement.

Q. You also agreed that the correct procedure is to turn to the right?

A. The Boston approach procedure directs a right turn, I will agree.

Q. You turned to the left on the west side of the localizer, and you agree that the correct Boston procedure is to turn to the right on the east side of the localizer?

A. I do.

Q. You agree this was a turn which might be called "tight?"

A. Fairly so.

Q. You agree you never did return to the outer marker to start your approach after the turn?

A. Up to a certain point.

Q. Did you get back to the outer marker?

A. Approximately I got back to the outer marker. I got back close enough to the outer marker to satisfy myself the procedure I had in mind would work.

Q. You never actually got clear back to the outer marker?

A. I am not positive on that point one way or the other.

Q. You agree you were below the glide path?

A. I would not be positive on that point except I will agree that I was told I was below the glide path.

Q. You couldn't tell whether you were or not?

A. I was pretty busy. I might not have noticed.

Q. You think the copilot would be in a better position to tell than you would?

A. He could have. He had only one thing on his mind.

Q. There is no question the radar operator told you you were 200 feet below the glide path?

A. I don't remember they said 200 feet. I remember they said below.

Q. They reported to you several timets you were below the glide path?

A. Not several, twice.

Q. You also agreed that the ceiling was 400 feet in Boston?

A. The reported ceiling was 400 feet.

Q. Going back, Mr. Hughes said your descent in this turn and descent, you descended to 1,000 feet. I believe, there is a slight point of difference. You think you were higher than 1,000 feet?

A. I think I was higher than that.

Q. But you don't know exactly?

A. No, I don't.

Q. He might have been in a better position to observe, since you were flying the airplane and were pretty busy?

A. He might have been in a better position to imprint this on his memory than I was. In other words, I don't remember.

Q. He was also probably in a better position to observe the rate of descent than you were?

A. I doubt that, I don't think so.

Q. You think you descended at a rate higher than 2,000 feet a minute?

A. I do not.

Q. Do you kno ?

A. I am positive I did not.

Q. Did you look at the instruments to see?

A. I always look at the instruments when I am flying on instruments.

Q. Do you know how fast you did descend in that turn?

A. I do not.

Q. When you broke out at Boston, do you agree with Mr. Hughes your altitude was about 400 feet?

A. I would say it was about 450 feet.

Q. You think the ceiling was higher than reported?

A. I definitely do.

Q. You agree with Mr. Hughes that there were some smoke stacks in front of you at the time you broke out?

A. I do not.

Q. You know there are smoke stacks there?

A. I know there are some smoke stacks in the vicinity.

Q. They would have been approximately in front of you in view of where you did break out?

A. That is what he says. That is not what I say.

Q. I am asking you.

A. I do not agree.

Q. You don't think you were anywhere near those smoke stacks when you broke out?

A. I do not.

Q. Don't you recall Mr. Hughes pointed out the smoke stacks to you so you would stay away from them?

A. I don't recall he pointed anything to me. He did say to me "there are the stacks." I didn't see any stacks.

Q. The smoke stacks, if they had been in front of you, would have been on the right, to the front and the right?

A. I rather disagree with that. I do not think so.

Q. Where do you think they would have been?

A. I think they would have been a little bit on the left and maybe slightly behind.

Q. You mean—you don't think you were as far left of the localizer as Mr. Hughes thought you were?

A. I don't think I was as far as he thought I was.

Q. In any event, you didn't see the smoke stacks?

A. I did not.

Q. As I gathered from your testimony, you thought that the Boston weather was going to be marginal?

A. That is true.

Q. Do you normally plan a non-standard approach when the weather is going to be marginal?

A. It all depends, but saying normally do I plan one, I would say not. Actually by normal, a normal approach has got to be one that is vectored by radar and you have no choice in the matter.

Q. In this case, you planned for some time in advance to have the non-standard approach?

A. That is true.

Q. You wouldn't consider your approach at Boston as being normal in any respects, would you?

A. I will have to get a definition of the word normal. What do you mean "normal?"

Q. I would consider normal as being usual, the usual type of approach.

A. It could have been the usual type of approach under the circumstances.

Q. The condition you are talking about is primarily that you thought there might be icing conditions?

A. Primarily I knew there would be icy conditions.

Q. You said the last weather report said nothing about icing conditions.

A. As I remember the weather report, it did not include freezing rain and sleet, but did include a certain amount of snow. I will not be postitve on this statement.

Q. You said the weather report prior to that had indicated icing conditions, that you thought that possibly icing conditions were still there but not mentioned in the last report?

A. I think so.

Q. Why didn't you ask somebody if there were icing conditions or not?

A. I asked for the weather report. They gave it to me. I accepted it as read.

Q. If you though there might be icing conditions and not reported, wouldn't it be the part of ordinary caution to ask somebody whether there were icing conditions?

A. Who would I ask, who would know?

Q. You assumed they left it out of the report. Why wouldn't you contact Eastern Air Lines radio and find out?

A. Would they know?

Q. They could check.

A. I don't think so.

Q. Isn't that the way you usually get information?

A. I asked Eastern Air Lines radio for the weather report and they gave it to me and that is all the information they could furnish me.

Q. Couldn't you ask them to check up and see if there were icing conditions?

A. I might have asked them but I don't think I would have gotten any information. They would have read the weather report over again.

Q. You indicated you thought this type of airplane was difficult to handle in icing conditions.

A. I know it is dificult to handle.

Q. Wouldn't you prefer to know whether there were icing conditions or not?

A. I would.

Q. Isn't there a prescribed CAA procedure for ILS approach at Boston?

A. There is, yes.

Q. You didn't follow that?

A. I did not

Q. Aren't you supposed to follow it?

A. Not under unusual circumstances—

Q. Unusual circumstances again is that you assumed there were icing conditions when the weather bureau didn't say anything about it?

A. I felt sure there were.

Q. Without checking up to see if there were icing conditions?

A. I still don't see I had any way of checking. The only possible way I would have of checking was asking some pilot who had just landed and that is definitely not the usual procedure.

Q. You don't think Eastern Air Lines radio could have contacted the weather bureau to find out?

A. I am positive they could not.

Q. You are sure?

A. I am positive they could not.

Q. Isn't that ever done?

A. Maybe off the record but not on the record.

Q. You mean a weather bureau won't put out information between weather reports?

A. The weather bureau already put out information and gave it to Eastern Air Lines radio and I got it.

Q. That indicated no icing conditions?

A. That is what they said.

Q. You thought there might be icing conditions?

A. I definitely thought so. The weather conditions at the Boston Airport might not be the same as they were at the outer marker. It is very possible they are not.

Q. All this unusual approach was based on your assumption there were icing conditions, isn't that right?

A. Principally, yes.

Q. What runway did you land on?

A. The northeast right-hand northeast runway. I think it is runway four. I have been away so long, I don't remember the exact number, but I think number four. It is the right-hand northeast runway.

Q. You say you were relying very heavily on this Boston omni. Why didn't you use ILS?

A. I think I told you before or read into the record, I read before that the reason I couldn't trust the ILS was there are multiple glide paths. I could have trusted the localizer which I did trust. However, I wasn't able to trutst the glide path. I was using the Boston omni as a double check on the localizer and the high frequency inner marker.

Q. You never used ILS?

A. I was using the ILS.

Q. You can't trust it?

A. I didn't say I couldn't trust it. I did say at this time I did not trust the glide path. There also would have been times when I didn't trust the ILS completely, if you want to put it that way.

Q. Since you felt under these circumstances you couldn't trust the glide path, you decided to fly below the glide path?

A. I decided to keep a safe altitude. It wasn't that I couldn't trust the glide path. You misunderstand me. It wasn't that I couldn't cross the glide path after I reached an altitude commensurate with the altitude that you are supposed to check over the outer marker.

Q. What is that altitude?

A. 1700 feet.

Q. Were you at 1700 feet over the outer marker?

A. I wouldn't say I was or wasn't; I am not positive.

Q. Weren't you at 3,000 feet over the outer marker?

A. If you mean the initial approach, it was 3,000 feet. I could not use the glide path and descend from 3,000 feet straight in from the outer marker.

Mr. Rivenbark:

We will take a five minutes recess.

(After a short recess, the hearing continued as follows:)

(By Mr. Harlan):

Q. Mr. Woolley, I think you were saying you actually did use the ILS, coming into Boston on this flight. Will you explain how you were using it?

A. I guess you might say I was using it by visual reference to the indicator in the ship.

Q. You didn't follow the glide path at all?

A. I am not sure that is a correct statement.

Q. If you followed it, you followed it far off?

A. I had visual reference to it.

Q. And about the localizer, you didn't use that because you were to the left of it?

A. I used the localizer, yes.

Q. You were to the left of it?

A. I was to the left of it.

Q. I don't think you explained why you took this left turn. Why did you turn left?

A. That might be a mistake on my part that I didn't catch at the time. The reason I turned left was because in the normal course of events, a left turn is a little bit easier for a pilot flying on the left side to make.

An airplane is easier for him to control in a left turn than a right turn and my normal reaction, without thinking, was a left turn. This was wrong as far as the chart was concerned. It was a natural thing for me to do. You might say a mistake I made.

Q. You had planned this procedure quite some ways back?

A. Yes.

Q. You had not planned the left turn?

A. I hadn't planned on any turn. I had planned a straight-in approach.

Q. With respect to the ice, was there actually ice on the plane?

A. I am sure there was.

Q. Did you see some?

A. No.

Q. Why are you sure there was?

A. By the way the ship handled.

Q. You never looked out to see if there was?

A. I didn't have time.

Q. You didn't look after you landed?

A. No.

Q. Why didn't you have time to look?

A. During this procedure?

Q. After you broke out, why didn't you look?

A. Why didn't I have time to turn on the wing light and ascertain whether there was ice on the wings or not? Is that the question?

Q. Yes. Couldn't you ask the copilot to do it?

A. I don't think that is possible. Just answering that question from a captain's standpoint, I don't think that anyone would do this; I knew the windshield was clear, therefore, whatever concern I had for ice being on the wings was taken up in the maneuvering of the airplane.

Q. The copilot could have looked, could he not?

A. He could have looked out but I don't think he could have seen any ice because the switch to turn on the wing lights is on my side; not wing lights, but the wing de-icer lights.

Q. It would have been helpful to know there were ice?

A. It definitely would have.

Q. You said, I think, that you felt some resentment on Mr. Hughes' part. How was that evidenced?

A. By his general talk and particular attitude.

Q. Did he say something that indicated he resented you or something you had done?

A. Yes.

Q. What?

A. Specifically when I checked over Gateway and estimated Vero Beach. which I did personally, he turned to me and stated in a rather demanding tone "my estimate is three seven."

Q. What I refer to is your testimony about the reason why you didn't inform the copilot your plan for your approach into Boston. That, of course, was the day before this Gateway incident you are talking about. What was there at the time you were going into Boston on Flight 644 that suggested that he resented you some way?

A. I had been told of a remark that he made either to the engineer or with the engineer or in some one else's presence to the effect that "watch this baby. He has really got it. This is really going to be a flight."

Q. When did you learn about that?

A. When I went back through the cabin.

Q. On the way to Boston?

A. On the way to Boston.

Q. Who told you about that?

A. One of the stewardesses.

Q. Even though you are aware there might be a little resentment, isn't it better procedure when conditions are kind of tough and the weather is marginal, to let the crew members know what you are going to do?

A. I am not sure it is.

Q. You think it is better to surprise them?

A. I wouldn't use the words "surprise them." I am sure it would be good procedure to notify the copilot of your intentions were it possible, but when it becomes marginal as to whether, it is safe to talk to the copilot during this time, I don't think it is a good idea to discuss it with him.

Q. Where you are planning an unusual approach like this a long time in advance, wouldn't it be good practice to let the copilot in on the secret and let him know you are not going to follow the glide path, and you are going to come in the side of the localizer and you are going to dive down through in case there is some ice?

A. The copilot was aware of that fact because he was wearing his ear phones when this was discussed with Approach Control in Boston. Therefore, I didn't have to make him further aware of the fact.

Q. Did you inform the flight engineer what you were going to do?

A. I don't think that is customary practice.

Q. I didn't ask you what the practice was; I ask you did you tell him?

A. No.

Q. When you first went on the stand at the start of this hearing, I believe you testified you didn't think there was anything untoward happened on that flight 644 on February 5th. Would you like to re-examine that and decide whether there was anything untoward that happened?

Mr. Bennett:

That was not his testimony. My question to him at that time was "was there anything untoward on this flight which would in your judgment necessitate or permit your discharge?" That was the question I put to him.

Mr. Harlan:

The record will show.

(Mr. Harlan):

Q. Let me ask you now, then, do you think there was anything untoward that happened on that flight?

A. I would have to get a clarification of what you mean by untoward in this incident.

Q. You understood it well enough to answer it before.

A. If you would like to ask the question as it was asked before, my answer will still be the same.

Q. Do you think it was untoward or unusual for a copilot to jerk the omni away from you?

A. I would say that was rather unusual, yes.

Q. You would consider your approach in this case to Boston was untoward or unusual?

A. It might have been slightly unusual.

Q. Would you consider your left turn to be a little bit unusual?

A. I would say in the normal course of events, it might not have been unusual. However, in this instance, it was contrary to the printed regulations.

Q. Contrary to the Company procedure and CAA procedure?

A. At 3,000 feet, no.

Q. You mean the left turn was not contrary to the procedure?

A. I do not think so, not at 3,000 feet. It is contrary to the established procedure for a normal instrument approach. I will grant you, but from an altitude of 3,000 feet, I do not think it would be contrary to any printed procedure.

Q. I suppose you realize what you are saying now is inconsistent with what you said before?

Mr. Bennett:

I object to that. The record speaks for itself. I don't think it is contrary to anything he said before.

Mr. Harlan:

The record will speak for itself.

(By Mr. Harlan):

Q. Getting back to Flight 647 of February 6th, I gather that there is considerable difference of opinion between you and Mr. Hughes about that flight. In the first place, I understood Mr. Hughes to say you flew a direct line from Gateway to Vero Beach?

A. I understood he said that, yes.

Q. Your testimony is that you flew over Snapper?

A. That is true.

Q. You stayed right on the airway all the way?

A. That is true.

Q. If you were flying directly on the airway between Snapper and Vero Beach, would it be possible to see Patrick Air Force Base out of the right window of the cockpit?

A. I would not say it was impossible; whether it is possible or not, I am not qualified to answer.

Q. Do you know how far you would be from Patrick Air Force Base if you were on the airway?

A. I do not.

Q. It would be more than two or three miles?

A. Yes, sir.

Q. Your testimony was also that you were over the City of Vero Beach at 6:30?

A. That is correct.

Q. And that the Vero Beach omni was reached at 6:32?

A. That is true.

Q. In that respect, you are disagreeing with Mr. Hughes because he said you reached the omni at 6:37?

A. That is true.

Q. I think you said the Vero Beach omni is southeast of the City of Vero Beach, is that right?

A. No.

Q. Where is it?

A. I said that the City of Vero Beach was northeast of the omni.

Q. The omni is southeast of the City of Vero Beach?

A. If you would like to put it that way, yes.

Q. Are you sure of that?

A. Reasonably positive. I haven't checked it lately but I think so.

Q. Where is the airport in relation to Vero Beach?

A. The Vero Beach Airport?

Q. Yes.

A. Offhand, I couldn't tell you.

Q. Do you know where the omni is in relation to the airport?

A. Not exactly.

Q. It is your testimony that the omni is southeast of the City of Vero Beach?

A. I think so, yes.

Q. You would come to the City of Vero Beach before you came up to the omni?

A. Right.

Q. When you computed your time from Gateway to Vero Beach, you assumed you were going by way of Snapper, is that right?

A. That is true.

Q. It is further by way of Snapper than on a direct line?

A. It is possible.

Q. Is it? Can you look at the chart and tell?

A. I am sure it must be, yes.

Q. When you computed you would be at Vero Beach at 6:30, and Mr. Hughes said he drew a direct line from Gateway to Vero Beach and figured an estimate at 6:36—

A. I understand that is what he said.

Q. How do you account for the fact that your estimate was so much less than his when you were estimating over a longer course?

A. Maybe I have had more experience in estimating than he has.

Q. He had made most of the estimate on the rest of the flight?

A. That is true.

Q. He had estimated pretty accurately, had he not?

A. Reasonably so, yes.

Q. You don't know how much further it is by way of Snapper than it would be direct?

A. Not exactly.

Q. Do you have any idea?

A. A very small amount but as to how much, I wouldn't.

Q. You said a reason why you decided to proceed on a direct course rather than going inland as recommended by ATC, was that would save the Company money?

A. That is true.

Q. The Company does not ask you to take chances on passenger lives in order to save money, does it?

A. It does not.

Q. In any situation where it is touch-and-go, as to whether it is safe, does not the Company recommend you take the safe course

A. I would agree to that, yes.

Q. There was some discussion of this seven minutes that apparently was lost or maybe was lost with respect to your estimates at Vero Beach, and the way the questions were asked, it sounded as if you had made your estimate to arrive in Miami somewhere a long way up the line. That isn't the way you make your estimates, is it?

A. We are definitely supposed to make an estimate, estimated arrival, in Miami when we check over Wilmington.

Q. That estimate was 7:15?

A. That is true.

Q. That is not where you made the 7:03 estimate?

A. No, that was a direct estimate; 7:05. I believe it was.

Q. This log shows 7:03 as the estimated arrival in Miami. It shows you arrived at that time.

A. I ame speaking of the radio contact and the re-estimated arrival time in Miami that I gave them.

Q. That estimate of 7:03 was made at Bell Glade?

A. The estimate that is in your form, in your possession, was made at Bell Glade.

Q. And the Bell Glade estimate was made when you left Vero Beach?

A. That is true.

Q. That is the way you had it all the way down from one check point to the other, you made the estimate?

A. Except that I am not positive when I gave Miami or Jaeksonville. In fact, I am sure the radio contact was made with Jacksonville and I gave Jacksonville a re-estimated time of arival in Miami which they confirmed.

Q. That wouldn't be the estimate that appears on this log?

A. No. It appears on the radio log and it is 0705.

Q. One question about the Boston flight, did you turn on the de-icing equipment?

A. I directed that the NESA be turned on.

Q. That is the widnshield—

A. And it was, that is the windshield.

Q. How about the wing de-icing?

A. I did not use the wing de-ice. They are on my side and they can be turned on by the captain.

Q. You did not turn them on—

A. I did not turn them on.

Mr. Harlan:

That is all.

Re-Direct Examination.

(By Mr. Bennett):

Q. This left turn you made in Boston wasn't a procedure turn?

A. It was not a procedure turn.

Q. It was made at 3,000 feet?

A. That is true.

Q. Did you understand that you were not on the prescribed instrument approach procedure to Boston at that time?

A. I understood that from Approach Control.

Q. You had gotten a clearance for an approach, I believe, you stated which was a straight-in approach and would not be the usual ILS approach, is that right?

A. That is true.

Q. Is it common knowledge among pilots that the Boston ILS has bends in it and is not completely reliable?

A. Yes.

Q. You would not jeopardize your flight or the people in the airplane or your own life to save money, would you?

A. Definitely not, under no circumstances.

Q. Did you regard either the flight into Boston or the flight on the following day as being in any way dangerous or endangering the lives of anyone?

A. No.

Mr. Bennett:

Nothing further.

Re-Cross Examination.

(By Mr. Harlan):

Q. You don't mean to give the impression that ATC in Boston told you it wasn't necessary to follow procedure?

A. Yes, I expect I do.

Q. You consider that normal for them to tell you to disregard all procedures and come in any way you want to?

A. We will have to qualify that because ATC cannot tell you to follow any definite procedures. They can only clear you for an approach. I informed them as to the approach I would make, and that made it a procedure.

Q. Did they say that procedure was all right, you could disregard the book which says do it this way?

A. I don't think Approach Control has any concern with the book.

Q. They don't have any right to waive any of the regulations, do they?

A. They have a right to waive the regulations, and often do in order to speed up traffic as long as it does not concern any other traffic in the area. They are a traffic-controlling agency, not—that is the answer. That is it.

Q. Can they tell you—they can't tell you you don't have to follow Company regulations?

A. They didn't say anything about any following of Company regulations.

Q. They could not very well tell you you should not follow the regular ILS procedures?

A. Yes, I think they could in an instant like this. They can always clear you for a straight-in approach.

Q. If it was an emergency or something like that?

A. They can do it anytime as long as there is no traffic in the area. I don't think you would be violating Company procedures to make a straight-in approach to Boston on the ILS.

Q. You mean that what you think, you were authorized by Approach Control in Boston to make a straight-in approach?

A. A straight-in ILS approach.

Q. And that is all?

A. I suppose it was all. I have nothing to add to that.

Q. They didn't authorize any of the other deviations from standard procedures which you executed?

A. They had no right to authorize or unauthorize any of those procedures under this circumstance.

Mr. Harlan:

That is all.

Mr. Bennett:

Nothing further.

Mr. Rivenbark:

You didn't report Snapper?

The Witness:

I didn't report Snapper.

Mr. Rivenbark:

Did you at any time see Patrick?

The Witness:

I never saw Patrick that I know of, no.

Thereupon: J. A. DUNCAN, a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Bennett):

Q. Please state your name.

A. J. A. Duncan.

Q. You are an air line pilot employee of Eastern Air Lines?

A. That is right.

Q. You are a captain?

A. That is correct.

Q. How long have you been a pilot?

A. 20 years.

Q. How long have you worked for Eastern Air Lines?

A. 16 and one-half years.

Q. How many hours of flight time do you have to your credit?

A. About 17,000 hours.

Q. Of those hours, how many are instrument hours, approximately?

A. Approximately 1500.

Q. Have you been in the room during the testimony that has gone into the record here?

A. Yes.

Q. Have you flown on any occasions the route which Mr. Woolley's aircraft took on February 6th, Gateway, Vero Beach?

A. No, I have never flown from Gateway to Vero Beach. My flight has always been from Wilmington to Palm Beach or the opposite direction.

Q. Would you take a map and draw a straight line from Gateway to Vero Beach, then compute the miles east of Patrick Air Force Base?

A. Yes.

Q. Just a minute. Strike that. I will ask it again. Did you draw a line on a map direct from Gateway to Vero Beach?

A. Yes.

Q. And then compute the miles that an airplane flying on a direct course from Gateway to Vero Beach would pass east of Patrick Air Force Base?

A. Yes.

Q. How many miles would that be?

A. I wrote it on the chart, 23 nautical miles.

Q. The chart you have reference to is the chart which has been put in evidence here?

A. That is right.

Q. USRF 10?

A. That is correct.

Q. That is an airways chart?

A Yes.

Q. If an aircraft flew direct from Gateway to Vero Beach, it would pass 23 nautical miles east of Patrick Air Force Base?

A. That is correct.

Q. In your experience as a pilot, being 23 miles away from Patrick Air Force Base and 12,000 to 16,000 feet altitude, would you be able to see trucks running around Patrick Air Force Base?

A. No.

Q. Might you see search lights if search lights were on?

A. Yes.

Q. Did you also make some computations with respect to the estimated times over the fixes of both the estimated times by Mr. Hughes as they have gone into this record, and the estimated times of Mr. Woolley, and also the actual times over these fixes; then make a com-

putation of the speed necessary in order to arrive over these fixes on those times?

A. I did with one qualification. I did not use the estimated time. I figured that would be no value. I took the actual reported time from the log.

Q. I hand you a document which I will ask that the Reporter mark for identification as Pilot's Exhibit No. 1.

(Whereupon the document was marked as Pilot's Exhibit No. 1.)

(By Mr. Bennett):

Q. Now I will ask you if this is your computation of those times and speeds?

A. That is my computation.

Q. Will you explain to the Board what you did do and then give the results that you obtained?

A. Yes; I took the time off the form, Wilmington, Azalea, Gateway, Vero Beach, Bell Glade and Miami. First—

Q. Actual—

A. That is the actual time over the log as reported there or over the fixes as reported. First, I computed—I will call it Hughes' time for lack of another name; in that time and computation, I used 0637 over Vero Beach. That is the time Mr. Hughes said he was over Vero Beach. I found they were making 224 nautical miles from Wilmington to Azalea. From Azalea to Gateway, they made a speed of 332 nautical miles. From Gateway to Vero Bach was 220 nautical miles.

Q. Per hour—

A. It is understood, I believe, per hour. From Vero Beach to Bell Glade, 315 nautical miles; from Bell Glade to Miami, 280 nautical miles. There was a descent from 16 to 12, I understand, from Gateway to Vero Beach.

Then I took the same times again and called this Mr. Woolley's and I used 6:30 for the time over Vero Beach as reported by Mr. Woolley.

I found the time at Azalea, 224 nautical miles per hour. Between Azalea and Gateway.

Q. Pardon me, go ahead.

A. Between Wilmington and Gateway, 232 nautical miles—I am sorry, I will start over. That was from Azalea to Gateway which was 232, and from Gateway to Vero Beach, 257 nautical miles, and from Vero Beach to Bell Glade 200, and Miami 280. Again the loss of altitude is noticeable from 16 to 12 between Gateway and Vero Beach.

I made out a third one. On this I used a speed that had been previously used throughout the report there, and the speed they had been making prior to entering Control 1150. I used this speed from Wilmington to Miami of 224 nautical miles.

With that particular computation, the plane was over Vero Beach omni at 6:32, and was in Miami at 0703.

Q. And the other, using that same speed, 224 knots, it works out that the actual time over the other fixes were precisely as they are reported, is that right?

A. I will read the actual time.

Mr. Tedlock:

This is assuming 224 knots into Miami?

The Witness:

Using 224, it seems to be constant in the 100 form.

Mr. Smith:

Starting with the time over Wilmington—

The Witness:

Starting with the time over Wilmington, in other words, Wilmington time was 0443. In all three of these computations, I arrived Azalea at 5:15.

On the next computation which was Gateway computation and Hughes' computation, the time was 0548 and on the Woolley computation, it was 0548, and on this standard speed computation, it was 0549, one minute difference.

The next check point from Gateway to Vero Beach is the big check point, and the time on Hughes' report, 0637, and the Woolley report, 0630, and on the standard time computation, 0632. On the standard time computation it works out nicely at four nine for Bell Glade and zero three for Miami at 224. On Mr. Hughes' computation, he gave the overtime as 6:49.

Mr. Smith:

Which required what speed?

The Witness:

Three fifteen using 0637, and on Woolley's time the Bell Glade came out at 6:49 and on the standard time they all end up in Miami at 0703, and I might add, regardless, 14 minutes seems to be about an average descent from Bell Glade to Miami made on all trips at all times.

Mr. Smith:

What route did you assume Gateway to Vero Beach?

The Witness:

I drew a straight line, a 90-degree bearing on Jacksonville Vor Army Station. I assume that must be somewhere in the vicinity of the center of the airway there.

However, if the line is drawn from the very edge of the airway to Vero Beach, the computation of distance either east of Patrick Field or abeam of Patrick Field would only be possibly two nautical miles at the most. If you wish, I will draw a line on the chart there.

Mr. Harlan:

Do I understand you tc say if you drew the line that way, you would be within two or three miles of Patrick Air Force Base?

The Witness:

No, with a line from approximately the center of the airway to Vero Beach and by recalculating and drawing a line from the edge of the airway to Vero Beach, the mileage distance east of Patrick Field would be the difference between 21 nautical miles and 23.

Mr. Harlan:

It would make a difference?

The Witness:

My computations are rough inasmuch as I had to use a piece of paper for computing the mileage and so forth.

(By Mr. Bennett):

Q. Are you aware of the type of aircraft being flown by Mr. Woolley?

A. Yes.

Q. What is it?

A. 1049.

Q. Do you fly the same aircraft?

A. Yes, sir.

Q. Is 315 knots an unusual speed for an aircraft, for this aircraft?

A. That is pretty fast.

Q. What would you have to do in order to accomplish that with the wind condition as it usually is on this airway?

A. I might make a generalization. The plant might be traveling ordinarily at no wind between 250 and 260 knots, depending upon the load, and with a tail wind, it would give the difference of 55; if it was doing 260, it would be doing 55 knots, about 315. That would be a tail wind.

Q. What is the prevailing wind on this airway, do you know?

A. No; let me say that the winds are variable and change at all times of the season, and vary from day to day and week to week, and I wouldn't attempt to make any kind of an answer.

Mr. Bennett:

I offer this in evidence, I offer in evidence Pilot's Exhibit No. 1.

Mr. Harlan:

I don't object to its going in but I think all the figures should be subject to further check. A lot of people around here know how to work computors and I imagine it would be a good idea to have it double-checked if it is going to be given any weight.

Mr. Bennett:

I see no objection to it, I am counting on my man here.

Cross Examination.

(By Mr. Harlan:

Q. Are tnese figures in miles per hour?

A. Nautical miles per hour.

Q. You said this was a Lockheed 1049. It is my understanding from what Mr. Woolley said that it was a 1049-C?

A. The record will show what type of plane it was. I am familiar with all types and it would have no radical bearing on the situation of speeds, whether a 1049 or a 1049-C.

Q. 1049-C is a faster airplane?

A. Yes, it is a few miles per hour faster, but winds more or less will take care of the difference in speed. We have a wind problem there at all times.

Q. The wind is the same for 1049 or C?

A. That is right, it depends on the loading of the airplane, gasoline, passengers; both planes will end up with the same speed on certain conditions.

Q. Between Vero Beach and Bell Glade and into Miami, the plane would be descending?

A. That is correct, if I understood he was at Vero Beach at 12,000 and ended up at zero feet, it would be.

Q. You would normally assume a plane would fly faster between Vero Beach and Bell Glade than between Gateway and Vero Beach?

A. He made a descent there.

Q. A descent of 4,000 feet over that entire area from Gateway to Vero Beach?

A. Yes, 4,000.

Q. He had come down 12,000 from Vero Beach into Miami?

A. Yes.

Q. You normally would expect him to start traveling faster?

A. Certainly an increase of air speed but not necessarily an increase in ground speed. That is a navigation problem.

Q. Does that increase ground speed?

A. Not necessarily. You can increase air speed without increasing ground speed.

Q. I am asking you on a descent like that, does it not normally increase the ground speed, too, unless you run into stronger head winds?

A. All things being equal, the ground speed would be higher.

Q. You wouldn't normally expect the speed to drop off from an average 257 miles per hour between Gateway and Vero Beach down to 200 miles per hour between Vero Beach and Bell Glade?

A. There is quite a change in air speed. I was looking for the loss of seven minutes.

I might add I couldn't make much out of the estimates, the Hughes' estimates and the Woolley estimates. Nothing jibed. That is why I went back and used the previous air speed. I wanted to see what would happen. I used the air speed the plane had been making prior to Gateway or Wilmington, and they had been making 224—5 knots, so I assume that—or made the assumption, let us use that all the way through and see what happened to the times; by using that, the times seemed to come out pretty well all the way through.

Q. Normally you would expect, assuming the same rate of descent all the way from Vero Beach into Miami, you would assume the ground speed would be higher between Vero Beach and Bell Glade than between Bell Glade and Miami?

A. That is approximately the same distance, and if a man left Vero Beach at 12,000 feet, he would be 6,000 Palm Beach and 6,000 at Miami, and there are atmospheric things that come into it. I would have to have a computor and know all conditions that existed.

Q. You fly faster at the higher altitudes generally?

A. No.

Q. Generally speaking, you don't.

A. You are getting into a field that you are not acquainted with.

Q. That is right.

A. There are too many variable conditions, temperature, lulls, and so forth entering into the whole factor. Sometimes we are—a plane at 13,000 feet will go faster than a plane at 20,000 feet.

Q. You don't know what the variables were on this flight?

A. No, I took a standard time.

Q. This is a mathematical computation?

A. Yes.

Q. I still come back to my question because I assumed the airplant goes faster at the higher altitudes.

A. It is indicated air speed is faster—let me correct that—let us start over with your question. It is true, indicated air speed at the altitude is faster—

Q. And the ground speed, too, is faster, assuming that the head winds are the same?

A. You would have the same —

Q. Because the air is thinner at the higher altitudes, you get higher ground speed assuming you have the same head winds?

A. That is right.

Q. Normally, assuming the same head winds, you would expect the descent from 12,000 feet to 6,000 feet to be faster, at a faster rate of ground speed than the descent from 6,000 to sea level?

A. One of the peculiar things about airplanes decending is building up a speed. The air indicates more as you approach the ground. Also you have more speeds to be used. You could descend at one speed and push it over and descend at 300 nautical miles; that depends on the altitude of the flight, how fast the descent was made. I have no control over that.

Q. That again is another factor you wouldn't know about as to whether possibly a faster descent was made between Vero Beach and Bell Glade than made between Bell Glade and Miami?

A. I have no way of knowing except if I knew the altitude over Bell Glade and I don't know it. I would have had made an assumption if I did.

Q. What kind of miles did you use, the miles on the chart?

A. I measured the distance between points on the chart. There is a mileage scale in actual miles and nautical miles. I used the nautical miles.

Q. You just measured if off the chart?

A. Yes, there is a scale at the bottom used for that.

Q. That is what you did all the way through?

A. Yes.

Mr. Harlan:

That is all.

Mr. Smith:

Could you take the chart that is already in evidence and draw the pencil line on there from Gateway to Vero Beach that you measured in determining the speeds and put your initials on it?

Mr. Shannon:

All of these speeds that are indicated here in knots, they are speeds over the ground between these points?

The Witness:
They are speeds over the ground.

Mr. Shannon:
There was some mention and I got mixed up.

Mr. Tedlock:
In making that chart, are you assuming that what the log says, Mr. Woolley is over Vero Beach VOR 30—

The Witness:
I used both computations, and assumed we were ov(Vero Beach at 6:37 and I again changed the time and I used 0630. I used both of their times.

Mr. Tedlock:
You used the log by Mr. Woolley has two times as being over Vero Beach VOR 6:30. He says he was over the city at 6:30 and over Vero Beach VOR at 6:32.

The Witness:
I was only trying to pull out seven minutes somewhere, and so on the Woolley computation, I used 6:30 and I use it because you could possibly run it back to the shore line.

Mr. Tedlock:
The record will bear it out. I don't know. He says he was over the Beach VOR at 32?

Mr. Bennett:
That is correct.

The Witness:
I used 6:30 over Vero Beach. The city is not on the map. I had to have something that was accurate.

Mr. Smith:
You indicated the termini of the line you measured between Gateway and Vero Beach—

The Witness:
You have already drawn a line in here.

Mr. Smith:
If yours is different, draw another one and intial your line.

The Witness:
I would end up at approximately the same line.

Mr. Smith:
Be sure the termini are correct. Draw the line you measured between Vero Beach and Bell Glade.

The Witness:
I used the standard airway.

Mr. Smith:
Draw it in there and put your initial on it.

The Witness:
All right.

Mr. Smith:
Indicate Bell Glade to Miami.

The Witness:
I did.

Mr. Smith:
You have drawn a horizontal red line on the chart at the point where you started?

The Witness:
I used a 90-degree bearing. That is an extension.

Mr. Smith:
That is where you start, at Gateway?

The Witness:
That is correct.

Mr. Smith:
And then you measured down to—

The Witness:
Vero Beach omni.

Mr. Smith:
It is a black triangle on the chart?

The Witness:
That is right.

Mr. Smith:
And measured from that point on a straight line to the black triangle at Bell Glade?

The Witness:
That is correct.

Mr. Smith:
And measured from the black triangle at Bell Glade to the black triangle at Miami?

The Witness:
That is correct.

Mr. Harlan:

Do you know where the Vero Beach omni is located in relation to the City?

The Witness:

Approximately; the field to the—about 340 degrees, that would put the field about on the northwest edge on the City and the omni is west of that.

Mr. Harlan:

Northwest—

The Witness:

Yes; I would have to measure it inasmuch as the line runs 340 degrees, it throws one's perception off. Do you want me to verify that the chart is right?

Mr. Harlan:

No. Would you interpret the chart? Does the chart show it is northwest of the field, the omni?

The Witness:

To be exact—

Mr. Harlan:

Let me call your attention over here on this legend on the chart. It has the facility and the airport and the tower on the back of the chart, Vero Beach each, it gives it in degrees and I want you to interpret that.

The Witness:

It is 290 degrees, the omni station from the airport.

Mr. Harlan:

What direction is that?

The Witness:
290 degrees is 20 degrees north of west.

Mr. Harlan:
That is all.

Mr. Bennett:
Nothing further.

(Witness excused.)

Mr. Bennett:
That concludes the Pilot's case. With respect to the oral argument—

Mr. Harlan:
I want to put Mr. Hughes back on the stand for a moment.

Thereupon: WELTON ROBERT HUGHES, a witness of lawful age, having been previousliy duly sworn, resumed the stand and testified as follows:

Re-Direct Examination.

(By Mr. Harlan):
Q. First of all, Mr. Hughes, I don't know whether you were here when Mr. Woolley said you did not make out the flight plan leaving Miami, nor did you check the weather leaving Miami on Flight 644, is that correct?
A. I did not make a flight plan, but I did check the weather.
Q. You did in Miami?

A. Yes, I did not check it with Captain Woolley. Sometimes we go in with the captain and check it together and sometimes individually. Each time I go in, they have a board with the schedule for the day in the Weather Department and it is normal procedure for us to initial that we have checked it.

Q. How about Boston?

A. No, sir, in Boston I did not make a flight plan. I did check the weather.

Q. You did the same thing both places, checked the weather, but did not make out a flight plan?

A. It is normal procedure for the copilots not to make the flight plan.

Q. He does not?

A. That is right.

Q. Did Mr. Woolley at any time tell you what his planned approach was to Boston?

A. No, sir.

Q. Did you learn it by listening to him explain it on the radio?

A. No, sir, I didn't know what type of approach he had in mind. I heard all the communications on the radio by Approach Control and the tower and Captain Woolley.

Q. You didn't hear him tell Boston Approach Control what his plan was?

A. No, sir, when we crossed the outer marker, they cleared us for a straight-in approach. He advised them he would have to make a 360-degree turn. He did not say which way he was going to turn.

Q. Was there ice on the wings coming into the Boston Airport on that flight?

A. No, sir, we encountered no icing condition and we entered the top of the overcast at 9,000 feet until we broke at 400 feet.

Q. There was no ice?

A. No, sir, not to my knowledge.

Q. No ice reported by the Weather Bureau?

A. No, sir.

Q. Did you turn off the Boston omni?

A. Yes, sir, at the time I turned it off, I told him we were too far east of the Franklin marker to pick up the Franklin marker.

Q. You told him you were going to do it?

A. Yes, sir, I got a bearing across the Franklin marker from the omni and we were passing east of Franklin, still southwest of the outer marker, at which time had he wanted to use the omni for navigation, he still had plenty of time to crank it back in. Our original clearance was from the river head. We were cleared to the Boston ILS outer marker.

Q. The Boston omni was turned back on again?

A. Not to my knowledge.

Q. After you turned it off?

A. No, sir, not to my knowledge. I didn't turn it back on.

Q. You don't know whether he did?

A. No I don't.

Q. Did you at any time on that trip 644 of February 5th say to anybody that something, in effect, "watch out for this fellow, he really has it?"

A. That is a statement that I consider to be libel. I did not make a statement and I think that if the individual that repeated that was questioned, they have no evidence or no proof I made such a statement, which I did not make such a statement.

Q. Did you say anythig to Mr. Woolley or anyone on that trip to indicate you resented him in any way?

A. Not in any way.

Q. Referring to—

A. Getting back to that point. I made a statement this morning—I thought Mr. Bennett was questioning me that the trip was a routine trip going northbound until we got to river head. At that time I said that we sat there in the cockpit and carried on a conversation and enjoyed the trip, and so there was no feeling of animosity on my part or his part, and I would enjoy flying with him as a person. This approach, both irregularities, has nothing to do with my personal feelings toward Mr. Woolley. I know nothing personally about him that would be derogatory to Mr. Woolley. My main interest was in the approaches and the character of the flight itself.

Therefore I don't think I showed any sign of any hard feelings at all, and to get back to why he said possibly I did show some resentment because he didn't let me make the landing in Boston. Coming into Boston, he made the—I made a takeoff out of Washington. It is more or less customary that we alternate every other leg. It isn't mandatory. That is at the captain's discretion. If he wants to let the copilot do it, it is his privilege. If he wants to make them it is his privilege. I made the take-off and landing at Washington. It was natural if he made the one out of Miami, he would make it in Boston. We made two stops. There was no resentment there.

Q. You didn't consider that unusual?

A. No, not at all.

Q. You have heard Mr. Woolley's testimony on redirect examination. I think you heard all except the first few minutes, and you have heard him describe the approach into Boston and the landing. After hearing that, do you wish to change the story at all that you told in your letter?

A. No, sir, I have nothing to change. I haven't exaggerated my letter or verbally here today. Everything I said was the truth. I say again it wasn't exaggerated and it wasn't reduced in any way. Mr. Woolley didn't deny any of the accusations I made on the approach other than modify them and cut them down to a lesser degree.

I pointed out the smoke stacks to him. He said in his statement I did call it to his attention that "there are the smoke stacks. They were off of the right side and dead ahead of us at the time." If he didn't see them, he sashayed around and missed them. Whether or not he saw them I don't know.

Q. I didn't care to take you through all of those—I wondered after listening to his testimony you wanted to change anything as far as 644 is concerned?

A. No, sir.

Q. Referring to 647 of the 6th, there were only two or three points I wanted to ask you about.

First of all, I want to ask you again if you could see Patrick Air Force Base from the plane as you came abeam of Patrick Air Force Base?

A. Yes, sir.

Q. Would you think it was 24 miles away?

A. Definitely not.

Q. Do you have any explanation of why it was closer than that when a direct line from Gateway to Vero Beach apparently is over 20 miles away?

A. None other than poor navigation.

Q. You still say the direct course was flown?

A. Yes, sir.

Q. You disagree with Mr. Woolley that the flight went over Snapper?

A. It did not go over Snapper.

Q. You are sure of that?

A. Positive. He made the statement he checked Snapper by 270 degrees from Orlando. That radio runs beyond Snapper. Any place you would pick up would be 270 degrees if he is actually passing to the east of the Orlando Airport. That bearing alone isn't a position check.

Q. Checking that would indicate he was over Snapper or abeam of it?

A. The only thing that radio will indicate is you are on a 90-degree radio from Orlando omni, some place along that radio.

Q. It could be anywhere between Orlando and Snapper?

A. Yes.

Q. If that was all he checked, he wouldn't know whether he was over Snapper or not?

A. That is right.

Q. As far as the time at Vero Beach was concerned, you still say that you arrived at the Vero Beach omni at 6:37?

A. Yes, sir.

Q. You don't want to change that testimony?

A. No, sir.

Q. After hearing Mr. Woolley's testimony about Flight 647, is there any part of your story about that you think should be changed or modified?

A. No, sir.

Mr. Harlan:

That is all.

Mr. Bennett:

No questions.

Mr. Rivenbark:

Do you remember the morning of 647, the general direction of the velocity of the winds Gateway-Miami and the altitude you were flying?

A. No, sir, I don't know the direction and velocity. However, they were going to give us some information of a head wind.

Mr. Rivenbark:

Do you think it would be one of those general quadrants?

The Witness:

Yes.

Mr. Rivenbark:

Are you familiar with the number of airports on the coast from Vero Beach north for 50 or 75 miles?

The Witness:

Are you speaking of active airports?

Mr. Rivenbark:

Yes, active airports.

The Witness:

75 miles north, yes, sir.

Mr. Rivenbark:

Will you differentiate between Patrick Air Force Base and Banana River Airport?

The Witness:

Yes.

Mr. Rivenbark:

It was Patrick and not Banana River you are speaking of?

The Witness:

That is right.

Re-Cross Examination.

(By Mr. Bennett):

Q. On this flight from Gateway to Vero Beach, were you using more than one omni?

A. From Gateway to Vero Beach using more than one?

Q. Yes.

A. Yes, we were using both.

Q. Where were they tuned to?

A. At Gateway you can only receive one omni. You are too far out of range—

Q. I have purely in mind when you were abeam of Snapper, according to your testimony—at that time were you using more than one omni?

A. We had Vero Beach tuned in.

Q. What other one?

A. I am not sure whether we had the Orlando tuned in.

Q. Wouldn't you ordinarily have it tuned in?

A. You ordinarily have your omnis tuned into the stations which make an intersection which is a compulsory check point. Going the direct route, Orlando omni did not give you any kind of check point that was compulsory so there was no use having it tuned in.

Q. You don't know whether the omnis were tuned in or not?

A. We had the one on Vero Beach tuned in.

Q. No other one that you know of?
A. That is right.
Q. Might you have had another one on?
A. Yes.
Q. If you had another one on, would it be possible to know when you were in Snapper?
A. We were not over Snapper.
Q. I understand you said that.
A. We were not over Snapper and it is possible to to check Snapper with two omnis.

Mr. Bennett:
Nothing further.

(Witness excused.)

Mr. Harlan:
That completes the case.

Mr. Bennett:
The only thing we have is oral argument.

Mr. Smith:
Let me suggest to counsel that they be straight that all their exhibits are properly numbered and here for the Reporter to have so he knows what they are.

Mr. Bennett:
The only exhibit I have is the computation made by Captain Duncan and that is here.
With respect to oral argument, I am completely cognizant that anything I might say could ably be rebutted by my opponent here and so—and vice versa—actually in view of the fact that we do have pilots on the Board, it is highly questionable if I would be able to tell you anything.

As a matter of fact, the Board Members probably understand the evidence that has gone in here in many instances better than I do, and so I don't want to make an oral argument that isn't necessary and with the agreement of counsel, I would be amendable to pass up an oral argument. If he insists upon it, I would naturally want to argue.

Mr. Harlan:

I think the facts have been very thoroughly gone over here, and I think, as Mr. Bennett says, the Board is well qualified to appraise the facts and, I believe, that possibly the best thing to do is to pass up oral argument unless for some reason the Board would like to have us argue the case.

Mr. Rivenbark:

Has counsel concluded their case?

Mr. Bennett:

Yes, we will pass up oral argument.

Mr. Harlan:

So that we have the record clear about the exhibits, all the exhibts have been received in evidence except Company's Exhibit No. 5, which was the transcript of the radio contact between Eastern radio and ATC and Jacksonville.

Mr. Bennett:

That was my understanding.

Mr. Harlan:

Company's Exhibits 1, 2, 3, 4, 6 and 7 have been received in evidence.

Mr. Rivenbark:

You are including Company's Exhibit No. 1, which was a letter from Mr. Burstrom?

Mr. Bennett:

It was received for a certain purpose.

Mr. Harlan:

I understood the Board received that and Captain Dice's memorandum for a limited purpose, although I contended it is admissible for another purpose, too, but the Board will not consider it for the other purpose unless it should decide to call on us for a show of authority. I still think that type of material is admissible.

Mr. Rivenbark:

All right.

Mr. Harlan:

All of those have been admitted except No. 5.

Mr. Rivenbark:

Anything further?

Mr. Bennett:

Pilot's Exhibit No. 1 has been received in evidence?

Mr. Rivenbark:

Yes.

That concludes this case.

(Thereupon the hearing was concluded.)

Pilot's Exhibit No. 1

HUGHES

		EJCT.			
IAN.		0443	32 MIN		
XEC	119	0515		224 K	16
XGA	127	0548	33 MIN	232 T	12
YRB	180	0637	49.	220	
YLG	63	0649		315	
RDIA		0703		280	

Wolle

OFF PAT 0618

IAN		0443	32		
XEC	119	0515		224	
XGA	127	0548	42	232	
YRB	180	0630		257.	16 1/2
YLG	63	0649		200	

To Whom It May Concern.
From R. G. Burstrom.

Subject: Safety.

I am writing this letter to record a series of events on this flight which are considered by me to be in complete disregard of all the standards, ideals and skill upon which airline piloting is based.

This flight was #702 on June 13, 1955. The crew consisted of Captain Paul S. Woolley, myself and Flight Engineer Jack Polcyn. Departure out of Miami was VFR and climb out was made by the captain through cloud layers on instruments for over two thousand feet without benefit of IFR flight plan, to a cruising altitude of 9,000 feet, which put us on top of the clouds.

Descent from 9,000 feet into Orlando was started pretty late. Descent was made at maximum cruise power setting with the rusult that the indicated air speed was always in excess of 235 knots and finally over the red line speed and off the indicator scale. Weather condition during descent was typical cumulus conditions with a light chop at lower altitudes where the indicated airspeed was greatest. Descent was made through clouds although VFR.

The tower cleared us to land when approximately over the outer marker and at this point, it was finally obvious to the captain that we were too fast. Power was snatched (and I do mean snatched) off and flaps were lowered at 210 indicated and the gear was lowered at 180. Approach flaps and landing flaps were also lowered well in excess of the limitations specified. Well, we made it—whew! ! !

The next leg between Orlando and Jacksonville was made by me. At Jacksonville, we taxied away from the ramp on ground control with a lively bit of byplay going on, on the radio, between the stewardess and the tower

boys. We were cleared to runway #23, wind SW at 20 knots, however the captain chose runway #12, so we go to runway #12. The tower cleared the stewardess to take off, so the throttles were snapped into position and away we went. We started out on the right hand side of the runway, but it became obvious that were drifting so fast that the plane had to be pulled off the ground or leave the runway on the left side, so we pulled. At the same time he yelled for gear up, but I didn't think we were flying yet, so I waited until the speed said we could be, and then I pulled the gear up. By the time my hand came off the gear lever, we were starting a Chandelle to the left which resulted in a 50° bank, which was started below 100 feet and reached its ultimate of 250 feet, with the airspeed during the whole maneuver finally working its way to 140 knots, at which point, we levelled off and shot towards Atlanta. After this performance was over, the captain remembered that we had neglected to get our IFR, which was previously filed so we go VFR (?) again.

We get on top VFR and high-ball it for Atlanta.

Coming into Atlanta, we let down through marginal VFR weather at maximum plus speed again, to discover a Delta Convair ahead and below us in the vicinity of Jonesboro. (I think it was Delta flight #42 or #442.) The captain proceeds to zero in on this plane and finally passes him to his (Delta's) right, about 150 feet away. We are now close to Jonesboro, so I switched to tower frequency to check, when Delta checks Jonesboro and wants to know, "Who that Eastern ship was that came dangerously close to us?" Before I have a chance to say a thing, the captain has the mike in his hand and is shouting at Delta, "Whadda you mean dangerously close, we weren't even near you. If you want to make something out of it, this is 702. Go ahead, make something

out of it," etc. Finally, the tower breaks it up saying "boys, boys, let's be friends" etc., and assigns up a position #2 behind our trip #182 and gave Delta #3 position. We are still descending at and beyond the maximum and #182 is about 1 mile away and turning final approach for runway #27. Again he snatches the throttles all the way closed, the flaps come down at 200 knots this time and the gear at 180 knots. We are still overrunning #182 so he pulls to the right of runway#27 and begins to parallel the approach to it. He finally picks up the mike and asks for #21 and plans an approach to it. The tower then ask Delta if he is willing to follow us on 21 instead of 27 and he says yes. Meanwhile #182 is still coming down the final approach for #27 so he can't clear us to land on #21. We continue on in and immediately before we hit, the tower clears us to land and Delta follows us in.

The rest of the northbound trip was normal.

R. G. BURSTROM.

February 16, 1956.

Captain F. A. Stone,
Sup't of Flight Operations,
Eastern Air Lines,
Miami, Fla.

Dear Captain Stone,

I would like to bring your attention to a matter which I consider to be of great importance to the safety of flying. It is in regard to Flight 644 of February 5, 1956 and the Captain of that flight, Captain Paul S. Woolley.

Flight 644 departed Miami for Boston with a scheduled intermediate stop at Washington. On departing Washington our ATC Clearance read as follows: Eastern 644 cleared to the Boston Airport G-5 to Dover, direct Coyle,

direct Riverhead V-16 Boston, maintain 13,000 feet. When we reported over Dover we were cleared to contact New York Center. We remained on the New York Center frequency until we reported Riverhead, at which time we were cleared to contact the Boston Center approaching Salem.

On contacting the Boston Center we were cleared to the Boston ILS outer marker via Franklin direct, descend to and maintain 4000 feet. Until we reported over Riverhead and contacted the Boston Center this flight was more or less a routine trip. "I have given you a brief history of Flight 644 of February 5, 1956 so that you can put yourself in my position as co-pilot and have some knowledge and understanding of what actually took place from the time we contacted the Boston Center, until the time at which our wheels touched the ground at Boston." The captain was flying the plane and he started the descent at Salem, actually we were a little east of Salem, and by the time we reported Norwich we were so far east that we picked up the Wyoming marker, we also received the Providence ILS outer marker. We were on and flying the Boston Localizer just a little north of Providence.

I informed the Captain that he was east of course and that he would not receive the Franklin marker. He did not make any correction, so I checked a bearing of 141° from the Gardner Omni and advised him he was east of the Franklin marker. Our clearance limit was to the Boston ILS outer marker at 4000 feet. The captain descended to 3000 feet, (we were on solid instruments) and crossed the Boston outer marker at 3000 feet, indicating 220 knots airspeed at which time he started a turn to the left (the west side of the localizer), the procedure turn is to the right and on the east side of the localizer, I reported the outer marker to approach control and they cleared us for an approach.

The Captain immediately put the plane in a screaming, diving, 45° banked turn and descended to 1000 feet. There is a hill and obstruction 840 feet high and to the west of the localizer. The turn was so tight that he completed his 360° turn northeast of the outer marker and never returned to the outer marker to start his approach. He continued his descent still well below the glide path and to the west of the localizer.

The radar adviser changed to the tower frequency and advised that we were 200 feet below glide path and well to left of localizer and to pull up. The Boston weather was reported 400 feet and 1 mile visibility. At 400 feet and still below glide path and left of course we brought out; at which time I saw the smoke stacks directly in front of us. These stacks are 351 feet high (we were at 400 feet) and to the left of localizer. I reported to the Captain that we were contact and he completed his approach and landing contact.

After landing the tower asked, "Did you make it?", and the captain told me to tell them "that we like to do it the hard way, anyone can do it the easy way", needless to say I did not relay his remarks.

During this layover I gave this matter considerable thought; and thought of refusing to fly back to Miami with him, but I changed my mind because the trip was non-stop from Boston to Miami. However the return trip 647 of February 6, 1956 was not without incidence.

On departing Boston on Flight 647 our clearance read as follows: Eastern 647 cleared to the Miami Airport, V-16 Riverhead direct Coyle, direct Dover, direct Lawerenceville, direct Wilmington, direct Palm Beach, V-159 climb to and maintain 16,000 feet. The Captain was in the rear and I was flying, approaching Azalea when Jacksonville called and advised that Jacksonville ATC reclears Eastern 647 to the Miami Airport from present position

direct to Barracuda direct Maytown V-3 Vero Beach V-3W Miami, maintain 16,000. I acknowledged and accepted the clearance.

Just prior to checking Gateway I heard Flight 629 check Snapper and estimate Palm Beach so when I checked Gateway I asked Jacksonville to check with ATC and find out why they had rerouted Flight 647. Jacksonville advised that the direct route from Snapper to Palm Beach had to be cleared by 0630 and that we would not be clear the area by that time. The Captain requested clearance from Gateway direct Vero Beach and Jacksonville ATC advised unable Gateway direct Vero Beach. The Captain told Jacksonville to cancel IFR that he would go DVFR Gateway direct Vero Beach and he estimated Vero Beach at 0630. Jacksonville ATC advised that he would penetrate V-158 going from Gateway direct to Vero Beach.

The Captain told Jacksonville to advise ATC that if they wanted to be of help, to tell him what time they planned to pull the trigger. That was the end of Communications with Jacksonville. I drew a line direct from Gateway to Vero Beach and figured an estimate at 0636 and advised the Captain, he said his estimate was 0630. At 0630 we were just east of Patrick Air Force Base, but the Captain reported Vero Beach 0630. We were actually over Vero Beach 0637.

The authenticity of these two incidences can be verified by checking with the Boston Approach Control, Boston Tower, Flight Engineer Jeff Fowler, Jacksonville radio operators, Captain Dave Schriner on Flight 723/6 and Capt. O. E. Taylor on Flight 629/6.

Captain Stone I have brought these two incidences to your attention because I ame very concerned about my own safety as well as the safety of the passengers that fly Eastern Air Iines. I feel that Capt. Woolley is a

dangerous pilot, irresponsible, and a menace to flying and our profession. I think some corrective action should be taken immediately.

Sincerely yours,

W. F. HUGHES,

Co-pilot Eastern Air Lines.

IMN 0443 /32

XEC 119 0515 224

XGA 127 0548 /42 232

VRB 180 0630 257.

BLG 63 0649 200

MIA 45 0703 OT 2x

2324.

19

1

3

3

125

IMN 0443 2415

XEC 119 0512

XGA 127 0549

VRB 180 0633

BLG 63 0649

MIA 45 0703

DATE | FLIGHT

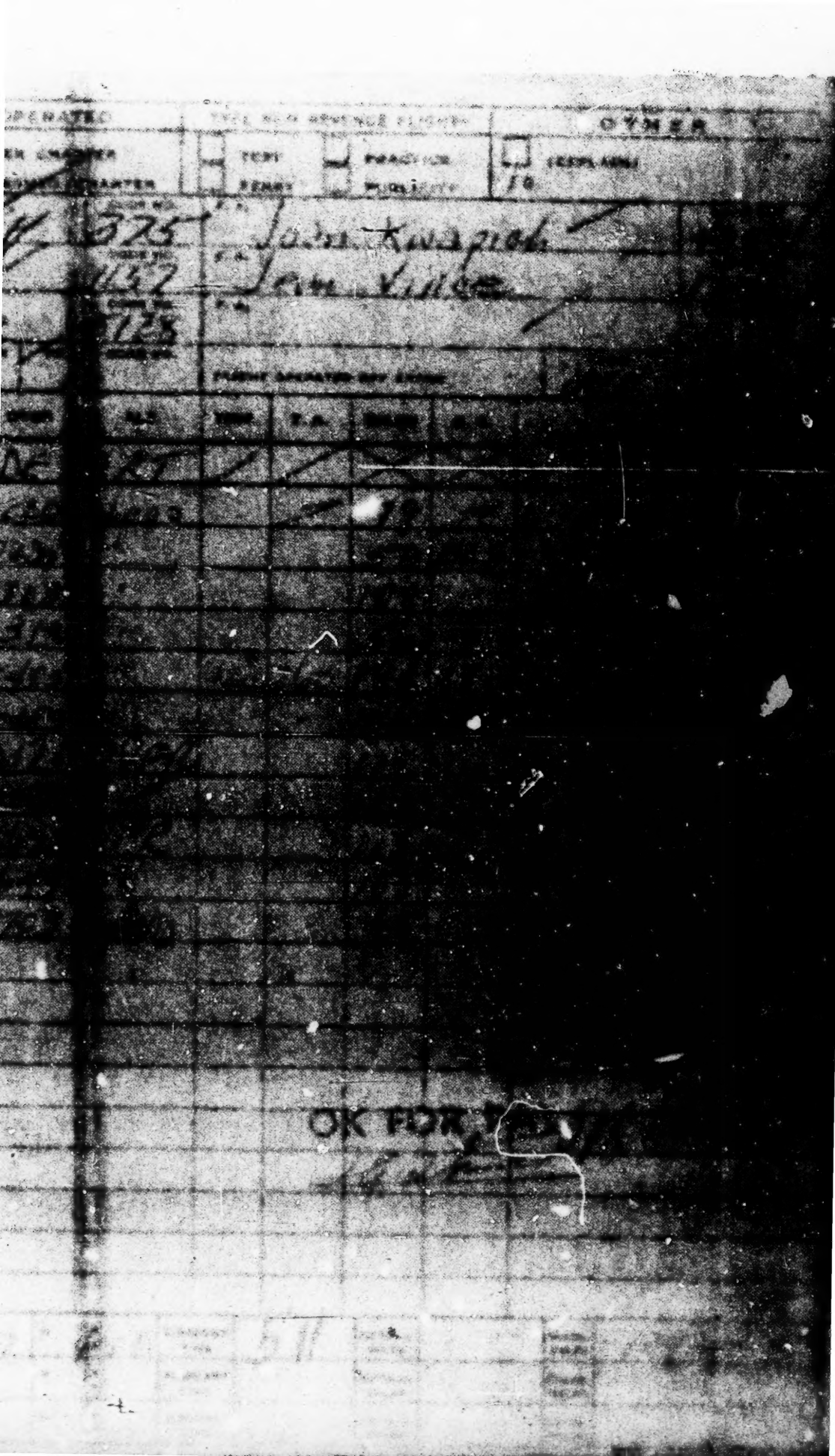
2 6 32 | 647

MAIL AND PASSENGER | PASSENGER ONLY | PASSENGER | CARGO

219 | BOS | MIA

P. S. Woolley
W. R. Hughes
Jess M. Fowler

				619	1621				


OTHER
OK FOR

Company Exhibit No. 4.

(Unable To Reproduce).

Record No. D4 2-6-56 0525E TM.

Jax Eal: Eastern Six Four Seven wants to know—said he filed direct West Palm Beach, Amber Seven to Miami and is he going to have to change it to Barracuda-Maytown and what have you?

Jax Artcc: Eastern Six Four Seven hang on one second and I'll—just tell him to stand-by and let me check down the line and see if we can slip him through, I don't know as he is right on the edge of the time element, tell him I will let him know in just a moment. I will check with Miami and Patrick. I don't believe so but there is a possibility.

Jax Eal: Okay.

Jax Artcc. TX. Zero five one two.

Mia Artcc: Miami Control.

Jax Artcc: Okay—tell you what, let me give your "A" man a Gateway estimate and then you take it. I have a question to ask you on it.

Mia Artcc: All right.

Jax Artcc: One at the Gate. Eastern Six Forty-Seven, a Compound Connie, at two-thirty, Boston, Wilmington and Barracuda is the next, and I'll tell you what, don't write the route of flight south of that down, I want you to—estimate Gateway at five fory-seven at sixteen thousand, show it to the controller I was just talking to, I want to know if he will be able to get by the—

Mia Artcc: What's his altitude?

Jax Artcc: Sixteen, one six thousand, see if he can get by before the missiles.

Mia Artcc: No, he won't, he'll have to change at Baracuda, I'm afraid.

Jax Artcc: Okay, consider it Baracuda-Maytown, Victor Three, Victor Three West Miami. TX.

Mia Artcc: NH.

Jax Artcc: Five fifteen.

Jax Eal: Eastern.

Jax Artcc: Eastern—just a second—where is AB, let me talk to her a minute. You can advise Eastern Six Four Seven he won't be able to go direct Baracuda-Palm Beach.

Jax Eal: Give me his clearance and let's go—he said he would be at West Palm Beach by six-thirty—he just told me so.

Jax Artcc: Well, I just gave the approval request to Miami and you can advise him that they will not accept him south of Baracuda in the channel. Here is the clearance.

Jax Eal: Go ahead.

Jax Artcc: ATC clears Eastern Six Four Seven over Baracuda direct Maytown, Victor Three.

Jax Eal: From where?

Jax Artcc: Baracuda.

Jav Eal: He said he is cleared what now—direct to West Palm Beach, Amber Seven, is the way he filed it.

Jax Artcc: The way he filed it but he wasn't cleared that way, here is clearance.

Jax Eal: Okay.

Jax Artcc: ATC clears Eastern Six Four Seven present position direct Baracuda-Maytown-Victor Three-Vctior Three West-Miami. Maintain sixteen thousand. TX.

Jax Eal: AB

Jax Artcc: Zero five one four.

Jax Artcc: Jacksonville.

Jax Eal: Eastern Six Four Seven Jacksonville, Eastern Six Four Seven says that he will cancel his IFR—he will go DVFR Gateway-Vero Beach Beach-Mimai.

Jax Artcc: He is going DVFR Gateway—

Jax Eal: Vero Beach-Miami.

Jax Artcc: Vero Beach-Miami.

Jax Eal: Can he do it?

Jax Artcc: Advise him that he will be going through the warning area there off-shore, Warning Area 158. I am showing canceling IFR at zero five one seven. HI.

Jax Eal: Warning at what?

Jax Artcc: His route is Gateway direct to Vero Beach, he will be going through the Warning Area 158. I am canceling his IFR at zero five one eight Eastern. HI.

Jax Eal: Okay and he checked Azalea at zero five one five, DVFR, you don't want that though do you—he has canceled.

Jax Artcc: HI, zero five one eight.

Jax Artcc: Jacksonville.

Jax Eal: He said if it suits you any better, he said he would go Gateway-Balsa-Vero Beach.

Jax Artcc: Okay, it doesn't bother me at all, we are just trying to protect him—he would be going—the missile firing is at Patrick and Gateway direct to Vero Beach will take him right through the missile firing.

Jax Eal: Missile firing is where?

Jax Artcc: Off of Patrick—and the route of flight Gateway-Vero Beach will take him through the missile firing and will also take him through the warning area—on a direct route—if he is VFR we are just trying—advise him we are just trying to protect him out there.

Jax Eal: Now—is off Patrick and will take him through missile firing and also through what?

Jax Artcc: Warning Area 158.

Jax Eal: And this, ah, this, ah, Gateway-Balsa-Vero Beach doesn't help any, huh?

Jax Artcc: No that won't help him at all, just advise him I am canceling his IFR at zero five one eight. HI. Zero five two zero.

Mia Artcc: Miami Control.

Jax Artcc: Eastern Six Four Seven.

Mia Artcc: Where is he at?

Jax Artcc: Southbound in the channel.

Mia Artcc: Oh, go ahead.

Jax Artcc: He hase been giving us a lot of trouble about this. He has canceled his IFR at zero five one eight and he gave me a route DVFR Gateway-Vero Beach. I advised him it would take him through Warning Area 158 and right through the missile firing and then he gave me another deal Baracuda-Vero Beach and I told him I was canceling his IFR at zero five one eight and we are picking him up on the radar here—(Record No. 2/6 0852 RA begins here)—and we are going to hold him as long as we can. What do you about that on a VFR deal.

Mia Artcc: Well, we don't do anything about it.

Jax Artcc: You give them to Patrick don't you, as he is going right through their area. He is definitely violating the deal.

Mia Artcc: He was going direct Baracuda-Vero Beach, is that what he said at the last?

Jax Artcc: His original clearance read, Baracuda-Maytown-Victor Three- Vero Beach-Victor Three West- Miami. He canceled, he was DVFR Gateway-Vero Beach. I advised him it would take him through the Warning Area 158 and right through the missile firing and then he said if it would make me feel any better he would go Balsa-Vero Beach. I told him was canceling his IFR zero five one eight and hung up.

Mia Artcc: Okay, we'll tell Patrick about it.
Jax Artcc: Okay, you had better advise Patrick.
Mia Artcc: Consider him calceling IFR?
Jax Artcc: Right.
Mia Artcc: JF (sign not too clear)

Jax Eal: Eastern.
Jax Artcc: Advise the pilot of Eastern Six Four Seven that we have advised the missile firing area at Ptarick of Eastern Six Four Seven's route of flight.
Jax Eal: Okay.
Jax Artcc: Due to the fact that he will be going right through the missile firing area.
Jax Eal: He said, well, I'll be through there at zero six three zero; he said, isn't that the time it's closing and I told him that I was under the impression that they closed that prior to in crder to clear that channel; you know, so there wouldn't be anybody in there right at the time they opened and he said well he sure thanks you for the information but he would be clear there by six-thirty.
Jax Artcc: Okay, HI. Zero five two six.
Jax Artcc: Jacksonville.
Jax Eal: Oh, did, ah, did these guys down there say or do you know what time they plan to start firing them missiles, or could you ask them for this guy.
Jax Artcc: We don't have any line to Patrick at all, we just go by what we have here on the teletype and they advised to have the complete area clear by zero six three zero Eastern. In other words no just passing by Patrick but that is the complete area down there clear by zero six three zero Eastern. And we had it worked out that Eastern Six Two Nine was the last one to go through on estimate.
Jax Eal: Okay, thank you.
Jax Artcc: HI. Zero five two seven.

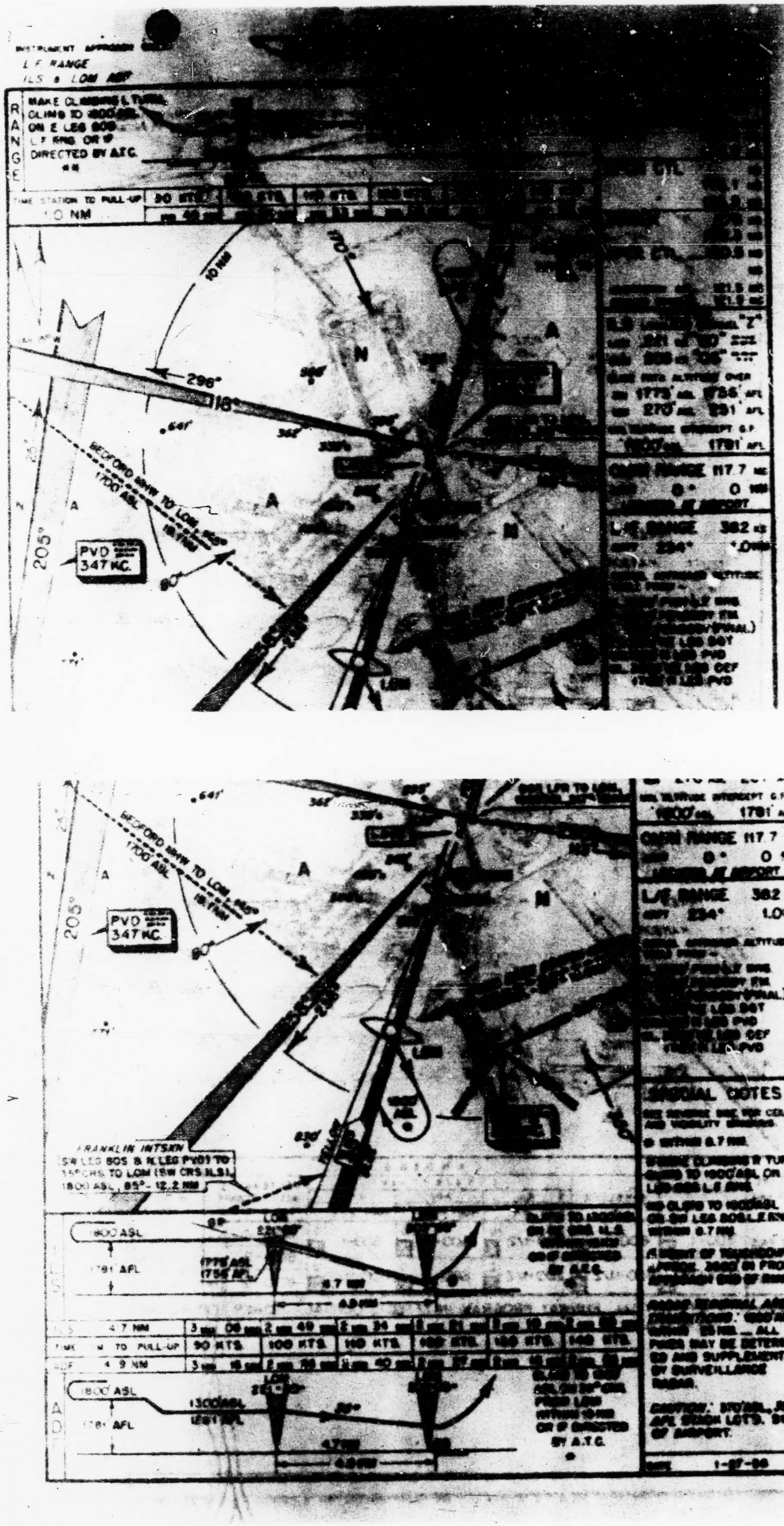
Jax Artcc: Control.

Jax Eal: Eastern Six Four Seven said to tell you he would be clear of that area by zero six three zero Eastern.

Jax Artcc: HI. Zero five three zero.

Company Exhibit No. 6.

No Exhibit Attached.

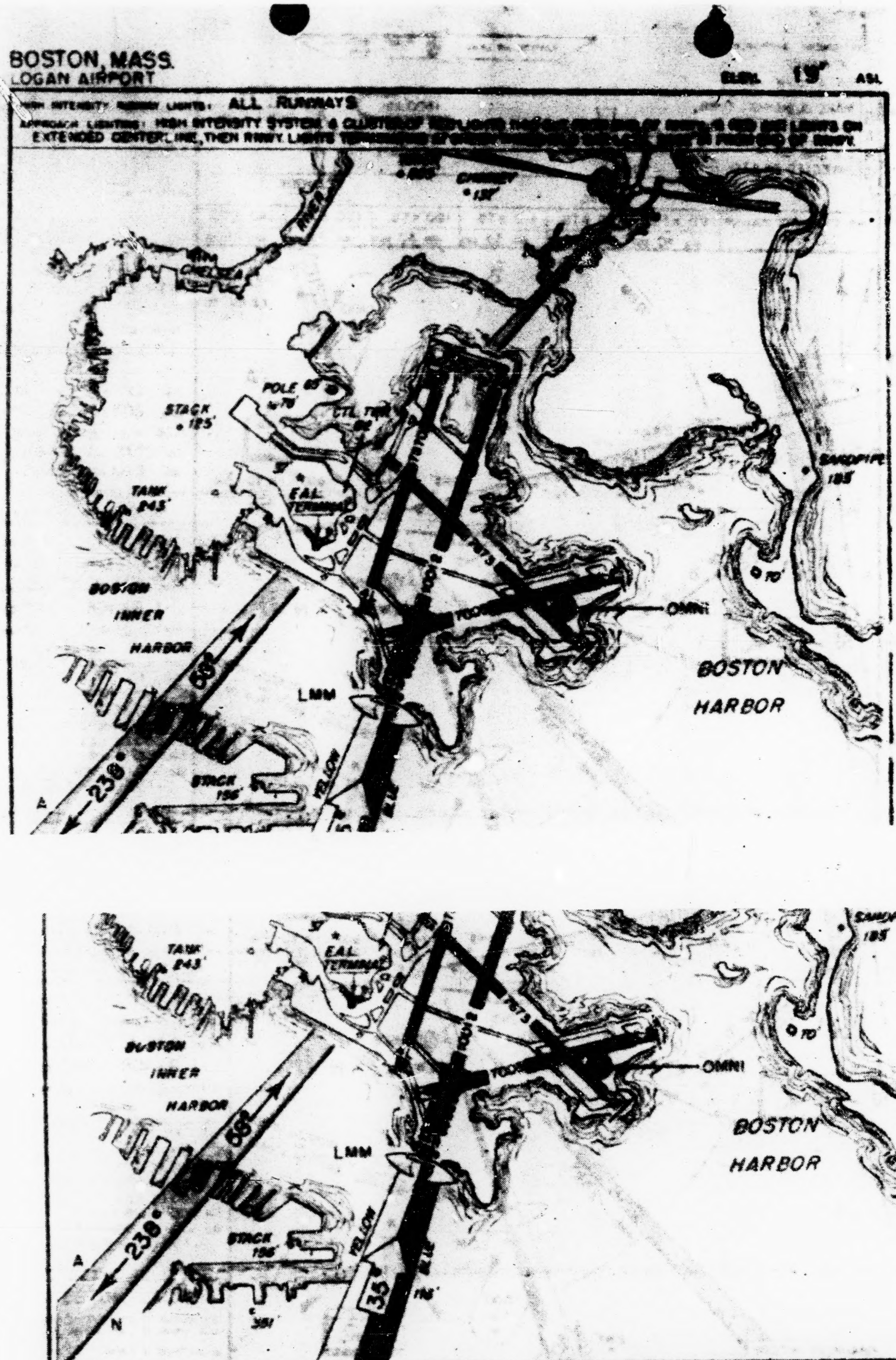

L F RANGE
ILS & LOM ADF
RANGE
MAKE CLIMBING L TURN
CLIMB TO 1800 MSL
ON E LEG BOS
L F RNG OR W
DIRECTED BY A.T.C.
TIME STATION TO PULL-UP
10 NM
90 KTS
100 KTS
110 KTS
10 NM
298°
118°
205°
PVD
347 KC.
BEDFORD WHTN TO LOM
1700 ASL
FRANKLIN INTSXN
SW LEG BOS & N LEG PVD 1 TO
118° CRS TO LOM (SW CRS ILS)
1800 ASL, 85° - 12.2 NM
1800 ASL
1791 AFL
1775 ASL
1756 AFL
4.7 NM
4.9 NM
LOM
225°
85°
LOC
225°
LOM
225°
1300 ASL
1291 AFL
178° AFL
4.7 NM
4.9 NM
ILS
TIME TO PULL-UP
90 KTS
100 KTS
110 KTS
CEIL RANGE 117.7 NM
LIFE RANGE 382 KTS
1.0 MIN
SPECIAL NOTES
1-27-56

BOSTON, MASS.
LOGAN AIRPORT

ELEV. 19' ASL

HIGH INTENSITY RUNWAY LIGHTS: ALL RUNWAYS

APPROACH LIGHTING: HIGH INTENSITY SYSTEM, CLUSTERS OF REPLACING BAR AT END OF EACH RUNWAY LIGHTS ON EXTENDED CENTERLINE, THEN RWY LIGHTS TO [illegible] FROM END OF RUNWAY



TYPE PLANE	TAKE-OFF		LANDING: CIRCLING		LANDING: STRAIGHT-IN, 3 ILS RWY 4R		LANDING: STRAIGHT-IN, ADF RWY 4R, L		LANDING: STRAIGHT-IN, LFR RWY 22 L		ALTERNATE ALL AIRCRAFT DAY & NIGHT		IF ILS INOPERATIVE EQUIPMENT REQUIRED
													RVR/RVV (ALSO OPERATIVE IF APPCH LIGHTS INOPERATIVE) 300-3/4, 400-1/2
2 ENG	300-1	D	600-1	D	200-1/2	D	600-1	D	600-1	D	800-2	ILS	IF ONE OR MORE INOPERATIVE 300-3/4, 400-1/2
											800-2	ADF	IF ALSO MALSR INOPERATIVE 400-3/4, 500-1/2
4 ENG	200-1/2	D	600-1 1/2	D	200-1/2	D	600-1	D	600-1 1/2	D	800-2	LFR	IF ALSO LOW INTENSITY APPCH LIGHTS INOPERATIVE 400-3/4, 800-1/2

NOTES: PREFERENTIAL RUNWAY PROGRAM IN EFFECT. CONTACT TOWER FOR RUNWAY PREFERENCE.

Copy.

Captain G. C. Diggs,
Miami.

L. H. Dice,
Miami.

June 8, 1955.

On June 2nd, 1955, while riding the jump seat on Flight 711 from Detroit through Columbus to Charlotte, I observed, among other irregularities, that the Captain, P. S. Woolley, stopped both the #1 and #4 engines of Super C Constellation #229 while taxing to the passenger terminal at Columbus, Ohio.

After the copilot and flight engineer vacated the flight deck, I discussed the irregularities with Captain Woolley, particularly the matter of stopping the #4 engine.

It is my opinion that Captain Woolley has no intention to conform with the standard procedure of stopping only the #1 engine.

L. H. DICE.

LHD:b

On October 18, 1956 MOTION OF AIRLINE PILOTS ASSOCIATION, INTERNATIONAL, and R. W. RIVENBARK and R. M. TEDLOCK FOR SUMMARY JUDGMENT was filed in the words and figures as follows:

(Title Omitted.)

The defendants, Air Line Pilots Association, International, and R. W. Rivenbark and R. M. Tedlock, by

their undersigned attorneys Hoffman, Kemper, & Johnson, hereby move the Court to enter summary judgment for the said defendants, in accordance with the provisions of Rule 56 (b) and (c) of the Rules of Civil procedure, on the ground that the verified pleadings and exhibits attached thereto show that the said defendants are entitled to judgment as a matter of law.

It affirmatively appears from the sworn complaint of the plaintiff and the sworn answer of the said defendants that the plaintiff freely and voluntarily submitted the issues presented in his complaint to the Eastern Air Lines Pilots System Board of Adjustment and that: (1) by contract and statute he is bound by the decision of such Board; and (2) having submitted such issues to the jurisdiction of such Board he cannot now challenge the jurisdiction of his chosen forum.

HOFFMAN, KEMPER &
JOHNSON,
By WYATT JOHNSON,
Attorneys for Defendants, Air
Line Pilots Association,
International, and R. W.
Rivenbark, and R. M. Tedlock.

115 duPont Building,
Miami, Florida.

On October 19, 1956 ANSWER OF EASTERN AIR LINES INC., S. L. SHANNON and GEORGE A. SMITH was filed in the words and figures as follows:

(Title Omitted.)

Come now defendants Eastern Air Lines, Inc. S. L. Shannon and George A. Smith, and answer the complaint in the above-entitled action as follows:

I.

Answering Paragraph I of the complaint, defendants deny that plaintiff is now "an air line pilot in the employ of Eastern Air Lines Inc.," but defendants state that plaintiff resigned from such employment effective February 20, 1956. Defendants further state that the agreement "effective July 1, 1954" referred to by plaintiff has been superseded by an agreement effective June 1, 1956, but the provisions of the July 1, 1954 agreement which are pertinent to this proceeding remain unchanged in the agreement of June 1, 1956. Except as stated above, Paragraph I of the complaint is admitted.

II.

The allegations of Paragraph II of the complaint are admitted except the second paragraph thereof which is denied except insofar as it alleges that the Air Line Pilots Association, International, is an association with its principal place of business in Chicago, Illinois, and is the collective bargaining agent under the statutes of the United States of America representing the air line pilots in the employ of defendant Eastern Air Lines, Inc., of which plaintiff was one prior to his resignation.

III.

Defendants deny that this Court has jurisdiction, and state that, under the Railway Labor Act and decisions of the Supreme Court of the United States and other Courts, exclusive jurisdiction of the matters complained of by plaintiff is in the Eastern Air Lines Pilots System Board of Adjustment. Except as herein denied, the allegations of Paragraph III of the complaint are admitted.

IV.

Paragraph IV of the complaint is admitted except insofar as it states or implies that plaintiff is or has been an employee of defendant Eastern Air Lines, Inc., since his resignation became effective February 20, 1956.

V.

Paragraph V of the complaint is admitted except insofar as it implies that the disciplinary action taken against plaintiff in 1950 was the result of a mere "operational dispute." The true character of the incident will be shown hereinafter.

VI.

Paragraph VI of the complaint is denied in its entirety. Copy of the original "Incident Report" filed by the Chief Controller of the Detroit (Willow Run) Tower to the Regional Administrator of the Civil Aeronautics Administration, showing the nature of the irregularity which gave rise to the 1950 disciplinary action against plaintiff, is attached hereto marked Exhibit A. Copy of a detailed official report of the three eye-witnesses to

the incident is attached hereto marked Exhibit B. Copy of plaintiff's report to his superior, claiming that he had used his "emergency authority" in connection with the incident, is attached hereto marked Exhibit C. Copy of the memorandum discharging plaintiff because of such incident is attached hereto marked Exhibit D. Copy of plaintiff's request for investigation and hearing is attached hereto marked Exhibit E. Copy of letter setting the time and place for such investigation and hearing is attached hereto marked Exhibit F.

Defendants deny that plaintiffs "explanation" of the incident was "accepted" by the Civil Aeronautics Authority, but state that where appropriate disciplinary action is taken by the employer the governmental authorities normally take no further action with respect to incidents such as the one referred to by plaintiff. Defendants further deny any implication that defendant Eastern Air Lines, Inc. at any time "accepted" plaintiff's "explanation" of the incident.

VII.

Answering Paragraph VII of the complaint, defendants show that both the first and second steps of the contractural grievance procedure were completed prior to the settlement of the grievance to which plaintiff refers. Attached hereto marked Exhibits G, H, and I are, respectively, March 3, 1950 decision of the "junior operating official" upholding plaintiff's discharge, plaintiff's appeal to the "senior operating official" dated March 10, 1950, and the decision of the "senior operating official" dated arch 31, 1950. Defendants further show that under date of April 6, 1950 plaintiff appealed to the System Board of Adjustment from the decision of the "senior operating officer", but such appeal was never processed be-

cause of the settlement of the grievance as described by plaintiff in his complaint.

VIII.

Paragraph VIII of the complaint is denied insofar as it implies that plaintiff was not aware of the "type of letter or purpose of same". Defendants state that plaintiff was made fully aware of the type of letter required and the purpose thereof, and the letter itself (Plaintiff's Exhibit 2) is self-explanatory. The remainder of Paragraph VIII is admitted.

IX.

Paragraph IX of the complaint is admitted except insofar as it alleges that the letter in question was prepared by "someone on behalf of Eastern Air Lines, Inc." The letter was prepared "on behalf of" plaintiff by his representatives in cooperation with S. L. Shannon, Vice President-Operations of defendant Eastern Air Lines, Inc.

X.

Paragraph X of the complaint is admitted except insofar as it purports to state the legal effect of the contract and plaintiff's right thereunder following the submission of his resignation.

XI.

Paragraph XI of the complaint is admitted.

XII.

Paragraph XII of the complaint is admitted except insofar as it refers to plaintiff's resignation as "the so-called discharge".

XIII.

Defendants deny Paragraph XIII of the complaint insofar as it purports to state that plaintiff challenged the jurisdiction of the System Board of Adjustment to hear and decide all questions and issues presented to it. Defendants state that no such challenge was made by plaintiff at any time, and that plaintiff freely and voluntarily submitted all issues to the System Board of Adjustment and specifically requested the said Board to decide the question as to the legal effect of the letter of February 20, 1956 accepting plaintiff's resignation and as to "the right of Eastern Air Lines, Inc. to accept a resignation of July 28, 1950," and as to the adequacy of the charges against plaintiff to support a "discharge". Attached hereto and marked Exhibit J is plaintiff's appeal or submission to the System Board of Adjustment; and attached hereto and marked Exhibit K is a complete copy of the record before that Board, showing the manner in which all issues were presented to the Board. The remainder of Paragraph XIII is admitted.

XIV.

Paragraph XIV of the complaint is denied.

XV.

Paragraph XV of the complaint is denied as pleaded. Defendants show that plaintiff resigned and that defend-

ant Eastern Air Lines, Inc. properly and lawfully accepted his resignation, and had good cause for doing so as the System Board of Adjustment properly found. Defendants further show that Eastern Air Lines, Inc. had good cause to discharge plaintiff, that if the letter of February 20, 1956 were to be regarded as a discharge all the necessary steps were taken to make it effective and the hearing and findings of the System Board of Adjustment are adequate to support a discharge.

XVI.

Paragraph XVI of the complaint is denied.

Affirmative Defenses.

1. Plaintiff freely and voluntarily submitted all the issues involved in his complaint to the Eastern Air Lines Pilots System Board of Adjustment pursuant to a contract provision (Plaintiff's Exhibit 1, attached to Complaint, p. 65, par. (1)) and a provision of the Railway Labor Act (Sec. 3 First (m), 45 U.S.C. 153 First (m)) specifying that the decision of such Board "shall be final and binding". Under the law and the contract he is bound by the decision of the said Board of Adjustment.

2. Exclusive jurisdiction of the matters set forth in the complaint is conferred by law on the Eastern Air Lines Pilots System Board of Adjustment, and this Court lacks jurisdiction to grant the relief sought in the complaint.

3. Plaintiff is estopped to deny the validity and legal effectiveness of his resignation.

4. The Complaint fails to state a claim against defendants upon which relief can be granted.

Wherefore, defendants pray that they be discharged from all liability in this action, with costs assesed against the plaintiff.

GAMBRELL, HARLAN, RUSSELL, MOYE & RICHARDSON,
By W. GLEN HARLAN.

825 Citizens & Southern,
National Bank Building,
Atlanta 3, Georgia.

CHARLES M. MOON,
(Charles M. Moon).

516 Ingraham Building,
Miami 32, Florida.

State of Florida,
County of Dade, ss.

S. L. Shannon, being first duly sworn, on oath deposes and says that he has read the foregoing answer and that the matters and things therein set forth are true; that the exhibits attached to this answer are true and correct copies of the documents referred to in the answer; that the letter of resignation involved in the above-entitled litigation is similar to others which have been written under similar circumstances in the past and the writing of such letters in connection with settlement of grievances is a usual and customary practice; and that he is making this affidavit individually, as a member of the Eastern Air Lines System Board of Adjustment, and as Senior Vice President and representative of Eastern Air Lines, Inc.

S. L. SHANNON,
(S. L. Shannon).

Sworn to and subscribed before me this 17 day of October, 1956.

E. W. COOPER,
Notary Public.

(Notary Seal)

My Commission Expires May 29, 1957.

State of Florida,
County of Dade, ss.

George A. Smith, being first duly sworn, on oath deposes and says that he has read the foregoing answer and that the matters and things therein set forth are true; and that he is making this affidavit individually, as a member of the Eastern Air Lines System Board of Adjustment, and as Second Vice President and representative of Eastern Air Lines, Inc.

GEORGE A. SMITH,
(George A. Smith).

Sworn to and subscribed before me this 17 day of October, 1956.

E. W. COOPER,
Notary Public.

(Notary Seal)

My Commission Expires May 29, 1957.

Certificate of Service.

I, Charles M. Moon, one of the attorneys for the defendants, hereby certify that I have this day served the foregoing answer on plaintiff by delivering the same personally to Mr. W. G. Ward, Ward & Ward, 1229 Alfred I. duPont Building, Miami 32, Florida, and on defendants Air Line Pilots Association, R. W. Rivenbark, and R. M. Tedlock, by delivering the same personally to Mr.

Wyatt Johnson, Hoffman, Kemper & Johnson, 1113 Alfred I. duPont Building, Miami 32, Florida.

This 19th day of Oct., 1956.

CHARLES M. MOON,

EXHIBIT A.

Department of Commerce Civil Aeronatuics Administration Incident Report.

Date of Incident 1/29/50.

Incident No. YIP APT 102.

To: Regional Administrator. Attention 3-577 Chicago International Airport, Park Ridge, Illinois.

From: Detroit (Williow Run) Tower Willow Run Air Terminal Ypsilanti, Michigan.

The following is a report of an incident which adversely affected the control of air traffic. This report is forwarded for your information and any action you deem necessary. No reply is required. If desired, the chief controller will be glad to discuss this report at your convenience. Any action which you may take to assist the Air Traffic Control Service to provide efficient and safe control of air traffic will be appreciated.

Agency Aircraft Identification Eastern Airlines Flight 703 (L-49)

Name (s) of Personnel or Pilot .....

Type of Incident Irregularity—Alleged Violation CAR 60.12.

Summary of Incident (use reverse side if necessary).

EAL 703 requested taxi instructions, departing instrument flight rules to Cleveland, Ohio. Detroit Air Route Traffic Control cleared EAL 703 to the Cleveland Airport, via red airway sixty-two, green airway three, (unable to approve direct route or three thousand feet), cruise and maintain five thousand feet.

Upon receipt of the above clearance, EAL 703 canceled his IFR flight plan and requested take-off clearance. As soon as the preceding departing aircraft, CAP 28, had crossed the northwest bondry of the airport, EAL 703 was cleared for take-off on runway 32.

EAL 703 started take-off roll in a normal manner, became airborne at 1908 EST, utilizing approximately the first one-third of the runway, then made an immediate sharp left turn passing south of the gun butt and passed over the terminal building between the control tower and the University of Michigan warm-up hangars at a very low altitude.

An alleged violation of CAR 60.12 is indicated in that flight was operated in a careless and reckless manner so as to endanger the life and property of others.

No other traffic involved except CAP 28.

Weather: Estimated 14,000 feet, thin overcast, 2300 feet scattered, visibility 15 plus.

Remarks (use reverse side if necessary)

Copy to: Regional Administrator. Attention 3-545.

Mr. Paul Foster, Chief Pilot, Eastern Airlines, Miami International Airport, Miami, Florida.

Attachments

Forwarded by original adopted by Thomas E. Rigdon, Chief Controller. Date: 1/31/50.

EXHIBIT B.

In Reply Address Regional Manager Civil Aeronautics Administration.

Department of Commerce, Civil Aeronautics Administration, Airport Traffic Control Tower Willow Run Air Terminal, Ypsilanti, Michigan.

February 24, 1950.

The following is a true statement of facts by the Airport Traffic Controllers on duty in Willow Run Airport Traffic Control Tower, relative to the incident involving Eastern Airlines Flight 103 (L-49) on January 29, 1950.

At 1901 EST, Eastern Airline Flight 703 was issued taxi clearance for take off on runway 32 to proceed southeast on the southwest taxi strip and then east on runway 9 right. The aircraft made a left turn from the gate and proceeded north on the west ramp. EAL703 was immediately corrected to make a 180 degree turn and taxi southeast on the taxi strip.

At 1902 EST, Capital Airlines Flight 28 (DC-3) was issued taxi clearance to runway 32, to follow the Eastern Constellation south on the west ramp and east on runway 9 right.

EAL703 crossed runway 9 right and taxied onto ramp #2, and was advised to make a 180 degree turn and return to runway 9 right. While EAL703 made the correction, CAP28 proceeded ahead of EAL 703, east on runway 9 right.

EAL703 was issued an air route traffic control clearance to the Cleveland Airport, via red airway sixty-two, green airway three (unable to approve direct route or three thousand), cruise and maintain five thousand feet. The pilot requested that instrument flight rule plan be canceled, which was compiled with.

CAP28 departed ahead of EAL703, and when the Capital flight crossed the bondary in his take off, Eastern 703 was cleared for take off on runway 32. EAL703 started take off roll in a normal manner, and became airborn at 1908 EST, utilizing approximately the first one-third of the runway. The aircraft then made an immediate sharp left turn and passed south of the gun butt towards the Control Tower, and continued the left turn so as to pass between the Control Tower and the University of Michigan warm-up hangars to the south.

We hereby certify that the above narrative is a true statement of the facts concerning the incident as we observed them.

MAYNARD E. NOURSE,
(Maynard E. Nourse),
Airport Traffic Controller,
JOSEPH K. COVEY,
(Joseph K. Covey),
Airport Traffic Controller.
MILTON E. NORDMEYER,
(Milton E. Nordmeyer),
Airport Traffice Controller.

EXHIBIT C.

To: Captain P. L. Foster,
Miami.

From: Capt. P. S. Woolley,
Miami.

February 7, 1950.

Subject: Alleged CAA Violation.

In regard to the letter received from the CAA regarding an alleged violation due to a violent maneuver while in the process of making a take-off at YIP; I wish to make this statement.

This take-off was started in a normal manner and accomplished in a very normal manner until the wheels were clear of the ground. This was after about one-third of the runway was behind us. At this time we encountered an abnormal amount of prop wash from the ship that had just taken off in front of us, thereby causing my ship to go into a left bank at a very low altitude. As I felt that this could develop into a bad situation, I held the nose of the ship down and held the turn in order to be sure to get away from the prop wash.

Due to the fact that we have been ordered at times to make turns below 500 feet to accomplish anti-noise patterns, it was felt that, although I was using my emergency authority to get out of a bad situation, it was not necessary to write you a letter of explanation.

This did constitute a situation that, to my judgment, could have become more or less serious, thereby I did exercise emergency authority in doing what I thought it best to do at the moment.

I feel that this was the safest thing to do, and as the emergency passed as soon as we cleared the field, I did not deem it necessary to make a report to you.

PAUL S. WOOLLEY,
Capt. P. S. Woolley).

PSW/1w

EXHIBIT D.

Captain Paul S. Woolley,
Miami.

J. H. Halliburton,
Miami.

February 13, 1950.

Discharge.

In reference to our conversation of February 10th, we would like to advise that a thorough investigation of the charges made against you in the report of the Chief Controller of the Detroit (Willow Run) Tower has been made.

This investigation indicates that Flight 703 of January 29th was operated in a careless and reckless manner so as to endanger life and property by your unnecessary maneuvers immediately following take-off.

In view of the numerous instances in the past where you have maneuvered aircraft of this company in a hazardous manner, most of which instances have been called to your attention by us, we do feel that in the interest of maintaining a safe operation we can allow you to continue to serve in command of our aircraft.

You will no doubt recall your last serious violation of safe operating practices which occurred in Albany, Georgia, and resulted in a sixty-day lay off for disciplinary purposes. You will also recall that this was not the first time it had been found necessary to impose this type of penalty on you. At the time this disciplinary action was taken, you were told that the company would not continue to put up with a continuation of these unsafe flying practices on your part, and that any future violations of company rules or safe flying practices would result in discharge.

In view of the above, therefore, personnel forms are being put through discharging you as of February 15th. Will you please check with Captain Foster regarding turning in all company property which is now in your possession.

.....

(J. W. Halliburton).

JHH:
cc. S. L. Shannon,
P. L. Foster.

EXHIBIT E.

Feb. 17, 1950.

Eastern Air Lines, Inc.,
Miami International Airport,
Miami 30, Florida.

Attention: J. H. Halliburton, Assistant Operations Manager.

Gentlemen:

In accordance with the provisions of Section 29 of the Agreement between Eastern Air Lines, Inc. and the air line pilots in the service of Eastern Air Lines, Inc. as represented by the Air Line Pilots Association, In-

ternational, the undersigned hereby files this, his grievance, and requests an Investigation and Hearing in the matter of his dismissal by the Company on February 15, 1950.

Notice of the time, place and date of Hearing of this grievance, in accordance with the time limitations provided for in the Agreement above-mentioned, will be greatly appreciated.

Yours very truly,
CAPTAIN PAUL WOOLLEY,
(Captain Paul Woolley).

EXHIBIT F.

February 21, 1950.

Mr. Paul S. Woolley,
800 Palarno Avenue,
Coral Gables, Florida.

Dear Mr. Woolley:

Your letter dated February 17, 1950, requesting an investigation and hearing in the matter of your dismissal by the company on February 15, 1950, has been received.

This investigation and hearing, in accordance with Section 29 of the current Pilots Agreement, has been set up for Monday, February 27th, at 3:00 p.m., in the office of Mr. S. L. Shannon, Vice President-Operations, at the Eastern Air Lines' Administration Building, International Airport, Miami, Florida.

Yours sincerely,
EASTERN AIR LINES, INC.
JOHN H. HALLIBURTON,
Assistant Operations Manager.

JHH:hs
cc: S. L. Shannon,
D. L. Foster,
B. R. Hall.

EXHIBIT G.

March 3, 1950.

Mr. Paul S. Woolley
800 Palermo Avenue
Coral Gables, Florida

Dear Mr. Woolley:

The facts developed during he hearing held Monday, February 27, in connection with your discharge from Eastern Air Lines effective February 15th and requested by you in your letter of February 17, have been carefully reviewed.

It is my understanding from your statements at this hearing that you do not deny the charges made against you by Mr. Thomas E. Ridgon, Chief Controller of the Detroit (Willow Run) Tower in his Incident Report No. YIP APT 102, of those made in the signed statement of Messrs. Joseph K. Covey, Maynard E. Bourse and Milton J. Nordmeyar, Air Traffic Controllers in Willow Run Tower. You agreed generally with these charges. You further stated that your reason for making this unusual and hazardous maneuver was the exercise of your emergency authority created by the prop wash of Capital Flight 28, a DC-3, which cleared the boundary of the Willow Run Airport before you were cleard for take-off.

Neither I nor several highly experience and skilled captains have been able to conceive any possible condition of turbulent air that could have been encountered by you as a result of the DC-3, which according to the statement of the Air Traffic Controllers and your own admission was a minimum of 6,500 feet ahead of and considerably above you at the time your take-off roll was started. Furthermore, had you declared an emergency at this time

as stated by you, you failed to comply with company regulations as issued in Flight Personnel Memorandum No. 49-46, dated March 2, 1949, page 2, Item 3, which reads in part:

"Effective immediately, any Captain who exercises his Emergency Authority as covered under CAR 61.7811, will at the next point of landing file a teletype message to his Chief Pilot with a copy to the Dispatch Office controlling his flight to the effect that Emergency Authority was used on a certain trip at a given place, and specifying the Radio Station or Facility contacted in declaring such emergency.

"The following sample teletype message is offered as a guide: MIAO Chief Pilot Copy ATL Dispatcher—Declared emergency on Flight 102/25 to EAL BMA (or BMA Control Tower, BMA Apprach Control, BMA Airways Radio while in vicinity BMA. Captain's signature."

"The filing of such a message by the Captain does not relieve him of the responsibility to submit to his Chief Pilot immediately after completing his flight, a detailed written report with three copies attached, outlining all the circumstances and conditions leading up to the declaration of an emergency. Don't forget to include in this report the name of the Station or Agency contacted by radio in declaring such an emergency."

Although you state you declared this emergency at approximately 1908 EST, January 29, 1950, no mention whatever of an emergency having been declared was received until your memorandum of February 7, 1950, which was an explanation to your Chief Pilot of the alleged violation filed by the Chief Controller of the Detroit (Willow Run) Tower.

Although currently effective company instructions state that use of emergency authority must be reported immediately by teletype, no mention of this alleged use of emergency authority on your part in this case was made until approximately ten days later.

In view of the above and after careful review of all factors connected with this incident, it is still my opinion that the maneuver executed by you immediately after take off at Detroit constituted an intentional, unnecessary, hazardous maneuver that endangered the lives of your crew and passengers and the safety of your aircraft. It is felt that your contention that this constituted exercise of your emergency authority was thought up at a much later date in an effort to explain this incident after it came to ligl. through the report of the Willow Run Tower.

The nature of these charges are quite serious as this maneuver endangered the safety of this company's operations. Your past record for similar type incidents has made it necessary to impose disciplinary action against you four times in the past; furthermore, when you were allowed to return to work after your last disciplinary lay off you were given to understand in no uncertain terms that you were being reinstated with the distinct understanding that you were on probation and any further violation of safe operating practices would result in immediate discharge. You acknowledged understanding of these terms.

In view of the above, it is not felt that any change can be made in the action taken in discharging you in accordance with my memorandum of February 13th.

Yours sincerely,
EASTERN AIR LINES, INC.
JOHN H. HALLIBURTON,
Assistent Operations Manager.

JHH: hs
cc: S. L. Shannon
P. L. Foster
B. R. Hall

EXHIBIT H.

March 10, 1950.

Eastern Air Lines, Inc.
10 Rockefeller Plaza
New York 20, N. Y.

Attention: S. L. Shannon, Vice President-Operations.

Dear Mr. Shannon:

I am in receipt of a letter dated March 3, 1950, from Mr. John H. Halliburton, Assistant Operations Manager, rendering his decision respecting my grievance. I do not find this decision satisfactory, therefore, please be advised that this is a request for an appeal hearing, pursuant to the terms of the agreement between Eastern Air Lines, Inc. and the air line pilots in the service of Eastern Air Lines, Inc. as represented by the Air Line Pilots Association, International.

Your reply stating the date, time, and place of the appeal hearing, in accordance with the time limitations set forth in the employment agreement, will be very much appreciated.

Yours very truly,
PAUL S. WOOLLEY,
(Paul S. Woolley).

EXHIBIT I.

March 31, 1950.

Mr. Paul S. Woolley
80 Palerno Avenue
Coral Gables, Florida.

Dear Mr. Woolley:

With reference to the hearing held in my office on March 24, concerning your discharge as an employee of Eastern Air Lines, I wish to advise that I have given this matter a great deal of thought and find that I am unable to justify any change from the decision reached by Mr. John Halliburton, Assistant Operations Manager, as outlined in his letter to you of March 3, 1950.

I therefore concur in Mr. Halliburton's decision as outlined in his letter of March 3 and must rule that your discharge as an employee of Eastern Air Lines was completely justifiable and therefore must stand.

Very truly yours,
EASTERN AIR LINES, INC.
S. L. SHANNON,
(S. L. Shannon),
Vice President—Operations.

cc: Captains J. R. Camden
B. R. Hall
J. H. Halliburton

EXHIBIT J.

April 3, 1956.

Mr. R. W. Rivenbark, Chairman
Eastern Air Lines, Inc. Pilots'
System Board of Adjustment
4510 Santa Maria
Coral Gables, Florida.

Dear Mr. Rivenbark:

In the Agreement between Eastern Air Lines, Inc., and the air line pilots in the service of Eastern Air Lines, Inc., as represented by the Air Line Pilots Association, International, relating to the establishment and maintenance of a System Board of Adjustment, which Agreement was signed on July 23, 1941, there appears the following paragraph:

"The Board shall consider any dispute properly submitted to it by the President of the Association or by the Division Manager of the division in which the dispute originated when such dispute has not been previously settled in accordance with the terms provided for in the Pilots' Agreement."

In accordance with the aforementioned provision of the Agreement, herewith is submitted for adjudication the grievence of Paul S. Woolley.

1. Question at Issue.

Did the Company properly sever the employment of Paul S. Wolley, a pilot employee, on February 20, 1956?

2. Statement of Facts.

On February 20, 1956 the Company by S. L. Shannon, Senior Vice President, directed a letter to Captain Paul S. Woolley, a pilot employee, purporting to sever his employment by the acceptance of a resignation dated July 28, 1950 (Submission Exhibit 1 attached). On February 27, 1956 the pilot employee Paul S. Woolley filed a grievance requesting a hearing based upon the severance of his employment (Submission Exhibit 2 attached). On February 27, 1956 the Company directed a letter to the pilot employee Paul S. Wo)lley denying him a "Hearing" as required by Section 29 of the Pilots' Employment Agreement, but granted him only a discussion of the matter (Submission Exhibit 3 attached). A discussion was had on February 29th as suggested by the letter of Mr. Shannon and on March 2, 1956 the Company directed a letter to the pilot employee Paul S. Woolley restating the determination to deny him a "Hearing" as required by Section 29 of the Employment Agreement (Submission Exhibit 4 attached).

3. Position of the Employee.

It is the position of the employee that his severance from the Company as a pilot employee on February 20, 1956 and in accordance with the letter of that date by S. L. Shannon, Senior Vice President, was improper and wrongful.

Wherefore, the grieving pilot requests the decision of this Board:

1. That his severance from the Company as a pilot employee on February 20, 1956 for the reasons assigned in the letter of S. L. Shannon, Senior Vice President (Exhibit 1 attached) was improper and wrongful;

2. That the Company be required to forthwith reinstate him as a pilot employee without loss of seniority or other conditions of employment; and

3. That he be reimbursed all monetary losses by him sustained because of the improper and wrongful action of the Company in the premises.

4. Position of the Company.

It is presumed that the position of the Company is as set forth in its letter to the grieving pilot under date of February 20, 1956, February 27, 1956 and March 2, 1956, Exhibits 1, 3 and 4 attached. If not, upon receipt of copy of this Letter of Submission the Company should submit its position to the Board in writing.

It is requested that this grievance be heard by the Board at its next regular or special session.

Sincerely yours,

AIR LINE PILOTS ASSOCIATION,

CLARENCE N. SAYEN,

(Clarence N. Sayen).

President.

CNS: JP

Registered Mail—Return Receipt Requested.

SUBMISSION EXHIBIT 1.

Eastern Air Lines
Miami International Airport
Miami 48, Florida

February 20, 1956.

Captain Paul S. Woolley
Eastern Air Lines, Inc.
Miami, Florida.

Dear Captain Woolley:

In reference to your letter of resignation dated July 28, 1950 please be advised that I personally do not feel that you have been handling your job in the propper manner and therefore your resignation as an employee of Eastern Air Lines, Inc. is hereby accepted to become effective immediately.

Please contact your Chief Pilot regarding any matters connected with this termination of your employment with the Company.

Very truly yours,
(S.) S. L. SHANNON.
(S. L. Shannon),
Senior Vice President

SLS: dk

SUBMISSION EXHIBIT 2.

February 27, 1956.
800 Palerno Avenue
Coral Gables, Florida

Mr. S. L. Shannon
Eastern Air Lines, Inc.
Miami International Airport
Miami 48, Florida.

Dear Mr. Shannon:

Receipt of your letter of February 20, dismissing me as a pilot for Eastern Air Lines, Inc., is acknowledged.

Under the agreement between Eastern Air Lines, Inc., and the air line pilots in the service of Eastern Air Lines, Inc., as represented by the Air Line Pilots Asssociation, International, Section 29, sub-section A, Paragraph numbered 1, it is provided that a pilot shall not be disciplined or dismissed from the Company without notification in writing as to any such action, and shall not be dismissed or disciplined without an investigation and hearing, provided the pilot makes a written request for an investigation and hearing within seven days after receiving such notification. Contrary to that provision, I have been dismissed without an investigation and hearing.

I hereby make written request for an investigation and hearing as provided in the Section referred to. Will you be kind enough to advise me of the date for the investigation and hearing.

With kind regards, I am

Very truly yours,
PAUL S. WOOLLEY,

800 Palerno Avenue
Coral Gables, Florida.

SUBMISSION EXHIBIT 3.

Eastern Air Lines
Miami International Airport
Miami 48, Florida.

February 27, 1956.

Registered Mail
Return Receipt Requested.

Mr. Paul S. Woolley
800 Palerno Avenue
Coral Gables, Florida.

Dear Mr. Woolley:

This will acknowledge your letter of February 27, 1956. My letter to you dated February 20, 1956 was simply an acceptance of your resignation. Consequently I do not think Section 29 of the Agreement between Eastern Air Lines and the Air Line Pilots Association is applicable. However, if you wish to discuss the matter with me I will be glad to talk with you on Wednesday, February 29, 1956, at 10:00 a.m. in my office.

For your information, my action in accepting your resignation was based in large part on the unsafe flying of Flight 644 of February 5, 1956 enroute into Boston, and your handling of Flight 647 of February 6, 1956 enroute into Miami. Your conduct in handling those flights confirms other information which has come to my attention from time to time.

Very truly yours,
(S.) S. L. SHANNON,
(S. L. Shannon),
Senior Vice President.

SLS:dk

SUBMISSION EXHIBIT 4.

Eastern Air Lines
Miami International Airport
Miami 48, Florida.

March 2, 1956.

Captain Paul S. Woolley
800 Palerno Avenue
Coral Gables, Florida.

Dear Captain Woolley:

This is to confirm what I told you February 29th in my office when you came in to discuss your case.

I am not changing my decision, and my letter to you of February 20, 1956 still stands.

Very truly yours,
(S.) S. L. SHANNON,
(S. L. Shannon),
Senior Vice President.

SLS:eh
Registered Mail
Return Receipt Requested.

Recitation.

As to Exhibit K attached to the foregoing Answer, it is one and the same as Exhibit A attached to the answer of Defendants' Air Line Pilots International, et a; which is being submitted in it's original form pursuant to Order of the Court.

On October 19, 1956, MOTION OF EASTERN AIR LINES, INC., S. L. SHANNON and GEORGE A. SMITH TO DISMISS AND FOR SUMMARY JUDGMENT was filed in the words and figures as follows:

(Title Omitted.)

Come now defendants Eastern Air Lines, Inc., S. L. Shannon and George A. Smith and move the Court as follows:

1.

To dismiss the action because the complaint fails to state a claim against defendants upon which relief can be granted.

2.

To dismiss the action on the ground that the Court lacks jurisdiction because exclusive primary jurisdiction is in the Eastern Air Lines Pilots' System Board of Adjustment created by agreement between defendant Eastern Air Lines, Inc. and the Air Line Pilots Association, which is the exclusive bargaining representative of plaintiff pursuant to the Railway Labor Act, 45 U.S.C. 151.

3.

To enter summary judgment denying and dismissing the complaint on the basis of the verified pleadings filed in this action.

Wherefore, defendants pray that they be discharged from all liability in this action, with costs assessed against the plaintiff.

GAMBRELL, HARLAN, RUSSELL, MOYE & RICHARDSON,
By: W. GLEN HARLAN.

825 Citizens & Southern
National Bank Building
Atlanta 3, Georgia.

CHARLES M. MOON,
(Charles M. Moon).

Suit 516 Ingraham Building
Miami 32, Florida.

Attorneys for Defendants Eastern Air Lines, Inc., S. L. Shannon and George A. Smith.

Certificate of Service.

I, Charles M. Moon, one of the attorneys for the defendants, hereby certify that I have this day served the foregoing Motion on Plaintiff by delivering the same personally to Mr. W. G. Ward, Ward & Ward, 1229 Alfred I DuPont Building, Miami 32, Florida, and on defendants Air Line Pilots Association, R. W. Rivenbark, and R. M. Tedlock, by delivering same personally to Mr. Wyatt Johnson, Hoffman, Kemper & Johnson, 1113 Alfred I. DuPont Building, Miami 32, Florida.

This 19th day of October, 1956.

CHARLES M. MOON.

On November 1, 1956 MOTION of Plaintiff FOR SUMMARY JUDGMENT was filed in the words and figures as follows:

(Title Omitted.)

Comes Now, the plaintiff, Paul S. Woolley, and moves the Court to enter a Summary Judgment in favor of the the plaintiff and against the defendants in this cause for the following reasons:

There is attached to the answer of the defendants Air Line Pilots Association, et al., and as a part of the exhibit to that answer and a basis for their Motion for Summary Judgment, type-written evidence of the record of the proceedings before the Grievance Board. Both the answers of the defendants Eastern Air Lines, Inc., S. L. Shannon, George A. Smith, as well as the answers of of all the defendants, contain the allegation in answer to paragraph 13 of the complaint, that the plaintiff did not challenge the jurisdiction of the System Board of Adjustment to hear and decide all questions and issues presented to it.

On page 2, at the beginning of the hearing, Mr. Bennett, who was the attorney for Mr. Woolley and also counsel for the Air Line Pilots Association, International, stated in response to the question of procedure as outlined:

"Mr. Bennett:

I have no objection. It may be that it would be an opportunity at this time for me to make clear to the Board and to the counsel for the Company the position which the Association and Mr. Woolley take with respect to his case."

The Court will notice that he was speaking both for the Air Line Pilots Association as well as Mr. Woolley.

The very first issue was made (pp. 2-3):

"First of all, we have the issue, as I understand the problem, of whether or not Mr. Woolley has, in fact, resigned his position with the Company, and the Association and Mr. Woolley take the position that he has not resigned. The basis for my statement is that notwithstanding the fact that in 1950, Mr. Woolley signed a document which purports to be a resignation to be accepted some time in the future upon an eventuality that this document is of no legal import because it circumvents the Employment Agreement. I have a case upon the point which is on all fours, which I will cite for you and counsel, and I would like to discuss it with you for a moment. The case was a precisely similar case heard by the Railway Adjustment Board under the Railway Labor Act and it was Railway Case No. 5269."

Then again the attorney for Mr. Woolley and for the Association, in speaking of the case, said (p. 4):

"The reasoning in that case, I think, is sound and it becomes very evident that if the Board or a Court would permit this character of dismissal, what we would get into is this. The Employment Agreement provides that a man shall not be severed from his employment except under circumstances which warrant it. That is to say, he is entitled to an investigation and hearing upon the circumstances of his dismissal, to make sure that the Company has had justifiable cause. With a letter of resignation on file, such as was on file here and the Company's ability under the circumstances and such a resig-

nation to accept it upon the thought in the mind of the Company that there was, in fact, justifiable cause for a severance; it is easily seen that the Company could be mistaken and upon investigation and hearing, it would be demonstrated conclusively or at least demonstrated to the satisfaction of someone, that the Company was in error here, and that obviously they shouldn't have severed the employee on the grounds which they chose.

And so as I stated, it is the contention of the Association and Mr. Woolley, that this letter of resignation and its acceptance, if you want to say it that way, or the notice from the Company on a certain date that the Company was accepting his resignation, is nothing more nor less than a discharge of Mr. Woolley for whatever reason the Company had at the time, and that he is entitled to an investigation and hearing upon those grounds. I don't know and I haven't known up to this moment, except from the record as it comes before me that the Company intends to stand upon the resignation. If they do, I am prepared to meet that issue in the fashion which I have indicated and then go to the merit."

Further, at the bottom of page 5:

"To summarize the position of the Association and Mr. Woolley, Mr. Woolley has not resigned. The letter of supposed resignation to be accepted by the Company at any time and for any reason, circumvents his rights under the Employment Agreement and is of no legal consequence * * *".

Then counsel for the Company and as reflected on page 7, said:

"I believe that the resignation is valid It was properly accepted by the Company and that should conclude the case. However, I think we can also show even if it were not regarded as a discharge case that there was adequate reason for the discharge, and on either of these grounds, the severance of his employment should be upheld by this Board."

The position of the defendants other than Eastern Air Lines is entirely inconsistent and contradictory to their own exhibit and the position which they took in this so-called hearing. The Board did not uphold the discharge of Mr. Woolley for cause even though that issue was present. It is respectfully shown that where such an issue is submitted to an arbitration or grievance board, the refusal of the board to find Captain Paul Woolley had been discharged for cause because of any circumstances which he had brought about in February, 1956, amounts to a clearance upon those charges, if any there were.

It is respectfully claimed that there was actually no hearing as far as the Grievance Board was concerned on the question of the acceptance of the resignation. Mr. Bennett, on behalf of the Association and Mr. Woolley, contended that as a matter of law the Grievance Board had nothing to hear because such a resignation was void and there was nothing for the Grievance Board to pass on. Mr. Harlan, counsel for the Company, took the same position, except he contended that the Company had a right to accept the resignation and that ended the case.

Then the Board continued to take evidence on some unspecified charges, all having to do with supposed grounds for discharge on the merits.

The Court will note that the Board never ruled as to whether they would attempt to consider or attempt to take jurisdiction over the question of the validity of the resignation, but apparently proceeded on the theory that there were some other general charges filed against Captain Woolley.

Attached hereto is a copy of a letter from Air Lines Pilots Association to all of its members, dated February 23, 1950, with reference to the circumstances which led up to the giving of the so-called letter of resignation of 1950, which letter will show that the statements now contained in the answers are totally inconsistent with the admitted facts and statements which were acknowledged at that time.

Therefore, as a basis for our Motion for Summary Judgment, we respectfully urge that there was never a hearing before the Grievance Board on the question of the validity of the resignation; that the only hearing was one on merit; that the Board denied the Company's position on the claim that Mr. Woolley had been discharged rightfully for actions which took place in February, 1956 in that it made no affirmative findings in that record but confined itself to upholding the contention from a legal viewpoint in accepting a resignation which was six years old. This finding of the Board, therefore, was without legal foundation.

WARD & WARD,
By W. G. WARD,
(W. G. Ward),
Attorneys for Plaintiff.

1240 duPont Building
Miami, Florida.

I hereby certify that copies of the foregoing Motion for Summary Judgment were this first day of November, 1956 mailed to Gambrell, Harlan, Russell, Moye & Richardson, 825 Citizens & Southern National Bank Bldg., Atlanta 3, Georgia; Charles M. Moon, Esq., 516 Ingraham Bldg., Miami, Florida, and Hoffman, Kemper & Johnson, 1115 duPont Bldg., Miami, Florida, attorneys for certain defendants.

W. G. WARD,
(W. G. Ward).

"Schedule with Safety."

Affiliated with the A. F. of L.

Air Line Pilots Association
International
3141 West Sixty-Third Street
Telephone (illegible) 6-2200
Chicago 29
February 23, 1950.

To All ALPA Members on Eastern Air Lines.

Dear Member:

On February 13, 1950, one of Eastern Air Lines' captains was discharged by the Company.

This action was taken following an incident report filed by the control tower operator.

The captain filed an emergency authority report on the incident and his report is substantiated by his copilot. In his emergency authority report, the captain states that immediately after takeoff he encountered sharp turbulence caused by the slipstream of a ship which had taken off just ahead of him. A low turn was made to avoid this turbulence.

Upon completion of this turn the trip proceeded on course without incident and no damage was caused by the aircraft or to its occupants.

The tower operator's report stated that the turnout was at too low an altitude.

The Company charges that this turn constituted the operation of an aircraft "in a careless and wreckless manner so as to endanger life and property by your unnecessary maneuver immediately following takeoff".

There are several implications here which are of grave importance to all members:

1. Despite its being at night with resultant uncertainty of visibility and judgment of distance, the Company elected to accept the report of the tower operator and ignored the statement of the captain and copilot, as contained in the report on use of emergency authority.

2. The reason given for discharge, in effect, was the Company's feeling that the captain was an unsafe pilot. This is in spite of fourteen (14) years without so much as a scratched wingtip. A safety record far better than that of many of the pilots who may be called upon to testify against him.

3. Also included in the letter of discharge was reference to past disciplinary action, all disposed of several years ago and bearing no pertinence whatsoever to the merits of the present case.

4. The Company's action is apparently based, to a great extent, upon the report of arbitrator Broadwin, in the Maston G. O'Neal National Grievance Case, who far exceeded the scope of his authority and states, in effect, "that if in the Company's opinion a pilot is unsafe that

the Company is on solid grounds when they discharge him regardless of what the facts in the case may be".

5. This obviously means that any pilot is subject to immediate discharge if the Company just wishes to say that they "consider him unsafe" years of accident-free background notwithstanding.

6. This naturally makes this action of grave importance to every pilot on the air line far exceeding the individual concerned and involves principles which if allowed to stand and become a precedent and would destroy the very foundation on which the job security of all pilots is based.

7. The Company was advised prior to the captain's being given the official letter of discharge that ALPA did not now, or would we ever agree to the principles that a man should be thrown out of his profession and life work simply on the opinion of another person or group of persons as outlined in the O'Neal decision but that any such action should be based upon proven facts which speak for themselves.

There were further advised that ALPA was anxious to see the fallacy of Broadwin's statement proven but, because of past-excellent relations on Eastern, we implored them not to take action which would make it necessary for Eastern to be the battleground for this type of proceeding.

These efforts and strong representation notwithstanding, the captain was summarily discharged on February 13 and a grievance is now being processed to effect his reinstatement.

How far this will have to go is at present problematical, but in the event it proves necessary to carry it

to the ultimate limits, every member would do well to give careful thought to the fact that although the captain involved this time was Captain Paul Woolley, it could have been anyone of us and if it stands it could be anyone of us at any time in the future.

It is with deep regret that this letter is written and it is too early to know if this indicates a major change in Company policy.

You will be kept fully advised of future developments.

Sincerely yours,

STERLING W. CAMDEN, JR., (F.H.),
(Sterling W. Camden, Jr.),
Chairman Master Executive
Counsel Eastern Air Lines.

SWC/fh

On December 5, 1956 SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS was filed in the words and figures as follows:

(Title Omitted.)

This cause having come on to be heard on the 9th day of November, 1956, upon the Motions For Summary Judgment of all the parties, viz., the Defendants Eastern Air Lines, S. L. Shannon, and George A. Smith (filed October 19, 1956); the Defendants Air Line Pilots Association, R. W. Rivenbark, and R. M. Tedlock (filed October 18, 1956), and the Plaintiff Paul S. Woolley (filed November 1, 1956), and the Court having heard argument of counsel and having granted counsel leave to file memoranda with the Court subsequent to the hearing, which memoranda have been submitted and considered

by the Court, the Court is of the opinion that there is no genuine issue as to any material fact and that Summary Judgment should be entered in favor of the Defendants.

The Plaintiff Paul S. Woolley brought this action for declaratory relief to set aside the August 1, 1956, Order of the Eastern Air Lines System Board of Adjustment (Plaintiff's Exhibit 4 to his Complaint) which Order denied the Plaintiff's grievance, namely that he had been wrongfully discharged from the employ of the Defendant Eastern Air Lines for which he worked as an air lines pilot. The Court has considered the entire transcript of testimony of the hearing before the said Board of Adjustment (Defendants Eastern, Shannon, and Smith's Exhibit "K" to their Answer), and the Court is of the opinion that a full, fair and complete hearing was afforded to the Plaintiff who had voluntarily submitted himself and his grievance to the jurisdiction of the said Board of Adjustment, and the Court is further of the opinion that no error has been shown to have been committed by that Board which would authorize this Court to set aside its decision.

It is unquestionable that the System Board of Adjustment possesses the power, as a tribunal of last resort, to deny a grievance of wrongful discharge when that Board finds that the grounds for discharge were for good and sufficient reasons, and that such decision is not reviewable by the Courts. But the Plaintiff contends that the Board in denying his grievance merely went into the question of the unqualified right of the Defendant Eastern to accept a certain letter of resignation which the Plaintiff had sent to Eastern some six years ago as part of a settlement of an altercation which he had with the Company at

that time. Plaintiff claims that a discharge based on the acceptance of such a letter of resignation is a wrongful discharge. But the Court is of the opinion that that question need not be decided in this case for the Board patently considered the acceptance as merely a vehicle employed in the discharge and if the Board considered the six year old offense it did so only as a circumstance to be considered along with the 1956 charges. It appears that by far the largest portion of the hearing was devoted to the Plaintiff's alleged misconduct in 1956, and in the Order of the System Board of Adjustment the Board found the reasons for the company's acceptance of the said letter of resignation in and of themself constituted good and sufficient grounds for the discharge of the Plaintiff. Paragraph 3 of the said Order (Plaintiff's Exhibit 4 to his Complaint) states:

"3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation."

From the opening statements of F. Harold Bennett, Esq., counsel for the Plaintiff and for the Air Line Pilots Association in the proceedings before the System Board of Adjustment, there can be no question that the alleged acts of misconduct in 1956 were before the System Board of Adjustment for its determination as to whether the commission of those acts, if proven, constituted grounds for which Eastern Air Lines could rightfully discharge Paul S. Woolley.

"(Mr. Bennett) . . . It may be that it would be an opportunity at this time for me to make clear to the Board and to counsel for the Company the position which

the Association and Mr. Woolley take with respect to his case.

" . . .

"And so as I stated, it is the contention of the Association and Mr. Woolley, that this letter of resignation and its acceptance, if you want to say it that way, or the notice from the Company on a certain date that the Company was accepting his resignation, is nothing more nor less than a discharge of Mr. Woolley for whatever reason the Company had at the time, and that he is entitled to an investigation and hearing upon those grounds. . . .

"Now that brings me to the point of the hearing, if we have such a hearing upon the merits of the case and so far as that is concerned, the Company has indicated its reasons in a general way for their dismissal of Mr. Woolley on the date on which he was dismissed, the happenings on two flights and they named the numbers of the flight. In discharge cases such as this, it is our contention and I think the cases are all clear upon the subject, that the burden lies with the Company . . . .

"To summarize the position of the Association and Mr. Woolley, Mr. Woolley has not resigned. The letter of supposed resignation to be accepted by the Company at any time and for any reason, circumvents his rights under the Employment Agreement and is of no legal consequence, and that the burden of showing that Mr. Woolley is rightfully discharged lies with the Company and they should go first. (Transcript of Testimony of hearing in question before the System Board of Adjustment, pages 2, 4, 5, and 6, being Defendants Eastern, Shannon, and Smith's Exhibit "K" to their Answer)"

At page 7 of the Transcript of Testimony before the Board counsel for Eastern Air Lines also framed the issues before that Board in his opening argument:

"I believe that the resignation is valid. It was properly accepted by the Company and that should conclude the case. However, I think we can also show even if it were not regarded as a discharge case that there was adequate reason for the discharge, and on either of these grounds, the severence of his employment should be upheld by this Board."

The issue being thus clearly presented to the Board and the Board having decided that the Defendant Eastern Air Lines acted "for good and sufficient reasons and that the Company did not act arbitrarily or capriciously", this Court does not have any authority to set aside that Board's decision. It is, therefore,

Ordered And Adjudged that the said Motions For Summary Judgment of the Defendants Eastern Air Lines, S. L. Shannon, George A. Smith, R. W. Rivenback, R. M. Tedlock, and Air Line Pilots Association, be and the same are hereby granted, and it is,

Further Ordered And Adjudged that the said Motion For Summary Judgment of the Plaintiff Paul S. Woolley, be and the same is hereby denied, and it is,

Further Ordered And Adjudged that Summary Judgment be and the same is hereby entered in favor of the Defendants and against the Plaintiff Paul S. Woolley.

Done And Ordered in chambers at Miami, Florida, this 4th day of December, 1956.

EMETT C. CHOATE,
United States District Judge.

On December 5, 1956 FINAL JUDGMENT favor of Defendants was filed in the words and figures as follows:

(Title Omitted.)

The Court having this 4th day of December, 1956, entered Summary Judgment in favor of the Defendants and against the Plaintiff Paul S. Woolley, it is therefore,

Ordered And Adjudged that Final Judgment be and the same is hereby entered in favor of the Defendants Eastern Air Lines, S. L. Shannon, George A. Smith, R. W. Rivenback, R. M. Tedlock, and Air Line Pilots Association, and against the Plaintiff Paul S. Woolley.

Done And Ordered in chambers at Miami, Florida, this 4th day of December, 1956.

EMETT C. CHOATE,
United States District Judge.

On December 13, 1956 MOTION of Plaintiff FOR NEW TRIAL was filed in the words and figures as follows:

(Title Omitted.)

The plaintiff, Paul S. Woolley, respectfully petitions the Court to grant a new trial for the purpose of setting aside judgment of this Court in favor of the defendants, entered on the 4th day of December, 1956, in the nature of a Summary Judgment and to take additional testimony to amend its Findings of Fact and Conclusions of Law, and to make new Findings and Conclusions.

For grounds for said Motion, plaintiff respectfully shows to the Court as follows:

The actual decision of which we have asked this Court to take cognizance, and which is indirectly the basis for the Complaint, is as follows (See Pl. Ex. 4 to Complaint):

"BeFore The Eastern Air Lines Pilots System Board of Adjustment.

In the Matter of the Grievance of:
Paul S. Woolley.

Decision of The Board of Adjustment.

The Grievant herein contends that his employment as an airline captain with the Company was wrongfully terminated in that his purported letter of resignation, dated July 28, 1950 and accepted by the Company February 27, 1956, was not intended to have effect as such and that there was not sufficient cause or ground for his involuntary dismissal.

The Board finds:

1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association International, on the one hand and the Company on the other hand;

2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

Decision of the Board: Grievance denied.

Signed at Miami, Florida, August 1, 1956.

R. W. RIVENBARK,
(R. W. Rivenbark),
Chairman.
R. M. TEDLOCK,
(R. M. Tedlock),
Pilot Member.
S. L. SHANNON,
(S. L. Shannon),
Company Member.
GEORGE A. SMITH,
(G. A. Smith),
Company Member."

In the opinion of this Court dated the 4th day of December, 1956, we respectfully say the Court erred in its construction of that order in that, as shown on page 2 of the opinion, the Court lays great stress upon this fact and quotes from the opinion and order

"That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation."

Prior in the opinion, the Court refused to pass upon the validity of the discharge by acceptance of the resignation by stating this:

"Plaintiff claims that a discharge based on the acceptance of such a letter of resignation is a wrongful discharge. But the Court is of the opinion that that question need not be decided in this case for the Board patently considered the acceptance as merely a vehicle employed in the discharge".

This suit was not a suit for damages for wrongful discharge, nor was it a suit to order the defendant, Eastern Air Lines, to reinstate the plaintiff.

This was a suit in the nature of a petition for an alternative writ of mandamus or a mandatory injunction to order the Board to reconvene in accordance with the construction placed upon the original Railway Act by the Supreme Court of the United States—Opinion delivered by Mr. Chief Justice Hughes in the case of Texas & N.O.R. Co. v. Brotherhood of Railway & S.S. Clerks, 281 U.S. 548, 50 S. Ct. 427, 74 L. Ed. 1034, when a similar dispute raised the question of the finality of the arbitration award under Section 9 (45 USCA, Paragraph 159), and the case went as far as the Supreme Court of the United States.

Under the procedure at that time, these arbitration awards were filed with the Clerk of the District Court of the District within which the hearing was held, and then either party had a right to impeach the award by motion filed within ten days from the date of the judgment. Mr. Chief Justice Hughes in speaking of this petition said:

"Petition for the impeachment of the award may be made upon the grounds that the award does not conform to the substantive requirements of the act or to the stipulation of the parties, or that the proceedings were not in accordance with the act or were tainted with fraud or corruption. But the Court is not to entertain such a petition on the ground that the award is invalid for uncertainty, and in such case the remedy is to be found in a submission of the award to a reconvened board or to a subcommittee thereof for interpretation, as provided in the act."

The last phase is what we have asked this Court to do. If this Court will reconsider the actual decision of the Board of Adjustment, the Court will notice that the preamble raises the issue that

"the Grievant herein contends that his employment as an airline captain with the Company was wrongfully terminated in that his purported letter of resignation, dated July 28, 1950 and accepted by the Company February 27, 1956, was not intended to have effect as such and that there was not sufficient cause or ground for his involuntary dismissal."

In other words, the Board as a preamble said there were two issues—

(1) That the resignation and acceptance thereof were illegal.

(2) There was not sufficient cause or ground for his involuntary dismissal.

The Board specifically did not pass on that second phase of the case and we respectfully say that there could be no other reasonable or fair interpretation of Findings 1 to 4.

In Finding 2, the Board said that the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons, but not arbitrarily or capriciously. That paragraph must be read in conjunction with the next two paragraphs, particularly paragraph 3 which then says in referring to paragraph 2 that Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitarily or capriciously in accepting the Grievant's resignation.

In Finding 4, the Board said that the Grievant's letter of resignation having been properly accepted by the Company, terminated Grievant's employment with the Company.

We now respectfully call the Court's attention again to the fact that this Court refused to pass upon the validity or invalidity of the letter of resignation, but construed the action of the Board as accepting the resignation as a vehicle or a substitution or the equivalent to an order of discharge for cause, based upon the 1956 incidents.

We do not understand how the Court in the absence of testimony and merely based upon the record of the hearing can inject the doctrine of equivalents. There is no ambiguity about the Board's order. The Board set up that there were two issues presented, and then specifically ruled on number 1 and did not rule on number 2. We charge in the complaint that there was no ambiguity in the order, that the Board did not as a matter of fact find that the plaintiff Woolley had been found

guilty of any charge sufficient to warrant a discharge for cause; that the Board had specifically refrained from passing upon that feature of the case; that the order which they had entered was wholly without legal foundation.

We have pointed out in our argument examples which followed the following pattern:

An automobile driver is charged with a violation of the speed regulation by running 25 miles an hour in a 30 mile zone. That is the first basis of the charge. Then there would be another charge that the man was running 35 miles an hour in a 30 mile zone.

Then the parties would be tried before a Municipal Court on the two charges, and the Judge would find that a man was guilty of violating the ordinance by driving 25 miles an hour in a 30 mile zone which, of course, would be clearly erroneous, but on the second charge, which actually charged an offense of violating the City law, the Court would dismiss that cause or action.

On appeal we would assume that the higher Court would simply reverse the Municipal Court because it would be no crime to run 25 miles an hour in a 30 mile speed zone. That is exactly the same situation which took place in this case. Suppose, however, that the Appellate Court in the automobile driver case would say in reversing the lower Court on the first charge, that there was no merit or foundation for such a claim but that they have examined the record and find that there were sufficient grounds to find the driver guilty on the second charge. We think, and respectfully submit without further agrument, that every one would concede that this would be an improper procedure.

That is exactly what this Court has done. The Court has held, in effect, that the resignation was not properly accepted and was not in itself a ground for discharge. That is all we have asked this Court to do because if that was not a sufficient ground for discharge, then we have asked the Court to order this Board to reconvene and to hear the matter on specific charges or, in the alternative, to make a finding on the second charge.

We say there is no issue in this case raised by the complaint and the answers as to the validity or non-validity of the actual discharge for merit because the Board has never passed on that issue.

We have carefully scanned the pleadings in this case and particularly noted paragraph 13 of the answers of all the defendants and can find no contention made that the action of the Board in approving the acceptance of the resignation was the equivalent to or a substitute for an actual finding that there was a discharge for cause based upon the 1956 incident.

We respectfully say that on motion for summary judgment by the defendants against the plaintiff, the Court should take the pleadings and the undisputed exhibits at their face value. We respectfully say that in the reading of the order or decision of the Board of Adjustment, there being no ambiguity, the Court could not simply from scanning that decision say that what was done there was the equivalent or substitute for another type of order which would have been on the merits of the discharge. There is nothing in the record which would justify such a supposition since there have been no statements made and no testimony produced by any of the members of the Board of Adjustment from which this Court could have arrived at such a conclusion.

The testimony of the members of the Board, if this matter were permitted to be heard for trial, might show that the Board intended to rule in accordance with what the plain and unambiguous language of its order would show.

We respectfully say that the Court has misinterpreted the rather limited issues which have been presented by the plaintiff in his complaint. We simply want this Court to order that the Board reconvene and either make a finding on the record which is now before it, or to reconvene a new Board and take new testimony if it wishes to, and then have the Board rule whether there has been a discharge based upon cause for the enumerated incidents in 1956. We say that there were no sufficient specific charges on those incidents, but if they were, then there was no finding by the Board on that point.

This Court has simply assumed through the doctrine of equivalents or substitution that the Board actually intended to make a ruling or should have made a ruling which it did not make.

The Court has held that this ruling was final. In effect, this Court has found that the Board met; that there were specific charges for grounds for discharge in 1956; that the Board found there were sufficient grounds for discharge for the 1956 incidents, and that therefore such a decision was final on the facts and was not reviewable by the Courts. We again respectfully ask this Court to designate one place in the record where such an order was ever made.

Suppose the members of the Board felt that, as a matter of law, the resignation had some strength and some verity, and assumed that as a matter of law they had a right to uphold the Company in accepting that resignation, but that they were not willing or could not get a majority vote to hold that Captain Woolley should

be discharged for cause for the 1956 incident, and they therefore entered what might be considered to be a compromise order. Apparently that is what they did, because we must assume that they were members of the Board possesing ordinary intelligence; that there were competent counsel representing both sides; that the Board members went to the trouble of outlining the two issues in the case, and then very carefully worded their findings on the one issue and excluded any findings on the second issue.

Now this presents a point very squarely for the Court's consideration. Regardless of what the Court might find on final hearing and after the taking of the testimony of the Board members, how can this Court on a summary decree, without any contentions being made in the pleadings, hold that the Board's findings on the first point, while in effect irregular and invalid, were the equivalent or substitute for full and fair finding on the second point.

It is possible, but not probable. that this Court would not be willing to say that the first order was invalid for uncertainty. We have not asked the Court that, but we have simply asked this Court to order that Board to reconvene and be required to make its findings on the second point, to wit, was Captain Woolley properly discharged for cause for the 1956 incidents.

We respectfullly show unto the Court that the constitutionality of the arbitration clause in the Railway Act was upheld in the Texas case (supra), because that voluntary arbitration was subsequently made the equivalent of a rule of Court, and appeal could be made from such arbitration within ten days after the finding was recorded with the Clerk of the District Court. When Section 205 of the Act was adopted, the National Mediation Board in its judgment had a right to provide for the

appointment of a National Board of Adjustment, the Board to be known as the National Air Transport Adjustment Board, two members to be selected by the carrier and two members by the Labor Organization, and thereafter the National Railroad Adjustment Board was created in 1934. (See U. S. Code Annotated, Title 45, Paragraph 153.).

But in this Act provision was made for appeal to the District Court for the District in which the petitioner resides and provision is made under paragraph p that the findings and order of the Adjustment Board shall be prima facie evidence of facts therein stated.

Then in 1936 amendment was made (45 USCA, Paragraph 184) for the appointment of Adjustment Boards for air carriers, and in the second paragraph of that chapter it was provided:

"It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181-188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title."

Apparently no specific provision has been made in Title 45, Paragraph 184 for specific right of review as provided for in Title 45, Paragraph 153, but under the provisions of Paragraph 153 and the spirit or intent enunciated by Congress in the adoption of Paragraph 184, and hearing before the Adjustment Board would be final only in certain events--

1. If the State law or policy or jurisprudence of the State in which the employees resides requires that employee to exhaust his administrative remedies before resorting to Court. In such a case then the findings of the Board would only be prima facie evidence.

2. The findings of the Arbitration Board or Board of Adjustment would be final in those States which did not require the exhaustion of administrative remedies on the doctrine of election, but even then in order to accord with due process of law and to prevent a violation of contractual rights, the procedure employed by the administrative remedy must be clear and certain and free from ambiguity or fraud. In other words, there should be a fair hearing and a clear and definite finding of fact one way or the other.

We have respectfully called to this Court's attention that the hearing in question did not comply with the requirements of due process, and among other things I pointed out:

1. The only findings by the Board on the unambiguous findings and decisions were based upon the acceptance of a void resignation.

2. Mr. Shannon, one of the four members of the Grievance Board, became the chief witness for Eastern Air Lines, Inc. That Company should have substituted a member other than Shannon, or Shannon should not have been permitted to testify over the objection of Mr. Bennett, the attorney for Captain Woolley. A Judge became a witness in his own case.

3. The issues as to right of discharge and cause of discharge were based upon the right to accept the resig-

nation. This was the basis of the discharge letter, the basis of the conference between the intermediate company employee, the basis for the next meting with the senior company official and the basis for the appeal to the Board of Adjustment. This was the primary and only charge submitted to the Board of Adjustment by Eastern Air Lines until at the time of the hearing the attorney for Eastern Air Lines, as pointed out in this Court's opinion, stated that he believed the resignation was valid, that is was properly accepted by the Company and that should conclude the case. Then he said:

"However, I think we can also show even if it were not regarded as a discharge case that there was adequate reason for the discharge, and on either of these grounds, the severance of his emloyment should be upheld by this Board."

We say that the Court misconstrued that statement because it did not consider the proceeding and subsequent statements of counsel in the case. Mr. Bennett, attorney for Captain Woolley, stated to the Board at that time that he did not know of the other charges; that there had been no specifications, and the Board continued nevertheless by stating that they thought that Captain Woolley knew or should have known what the other charges were. That type of hearing, we respectfully say, does not accord justice to the parties, particularly when coupled with the fact that the Adjustment Board only ruled on the first statement made.

We further respectfully urge that under the admitted law Captain Woolley is a party to the over-all contract. It is a contract made for his benefit. Therefore he and Eastern Air Lines are in privity of contract; that his contractual rights have been severed and breached by

an irregular administrative proceeding which insofar as it is shown on its application for summary judgment was insufficient and inadequate to constitute due process.

We therefore respectfully ask for a new trial; that this Court set aside its order for summary judgment in favor of the defendants and order that the matter proceed to trial under the accepted practice, at which time these very disputed and very debatable and contradictory factual matters could be determined in due course of trial.

WARD & WARD,
By W. G. WARD,
(W. G. Ward),
Attorneys for Plaintiff.

1240 duPont Building,
Miami, Florida.

Certificate of Service.

I, W. G. Ward, one of the attorneys for the plaintiff, Paul S. Woolley, hereby certify that I have this 13th day of December, 1956 served the foregoing Motion for New Trial Under Rule 59, Federal Rules of Civil Procedure, by mailing the same postage prepaid addressed to the attorneys for the defendants as follows:

Messrs. Charles M. Moon and Gambrell, Harlan, Russell, Moye & Richardson; 516 Ingraham Bldg., Miami, Florida; Attorneys for Defendants Eastern Air Lines, Inc., Shannon and George A. Smith.

Messrs. Hoffman, Kemper & Johnson; 1115 duPont Bldg., Miami, Florida; Attorneys for Defendants Air Line Pilots Association, Rivenbark and Tedlock.

W. G. WARD,
(W. G. Ward).

On December 17, 1956 MOTION OF AIR LINE PILOTS ASSSOCIATION, R. W. RIVENBARK and R. M. TEDLOCK, TO STRIKE MOTION FOR NEW TRIAL was filed in the words and figures as follows:

(Title Omitted.)

The defendants, Air Line Pilots Association, R. W. Rivenbark and R. M. Tedlock, by their undersigned attorneys, Hoffman, Kemper & Johnson, respectfully move the Court to strike the "Motion for New Trial Under Rule 59, Federal Rules of Civil Procedure" filed by the plaintiff herein, or in the alternative to deny said motion and for grounds for such motion to strike or deny respectfully show unto the Court that Rule 59 of the Federal Rules of Civil Procedure applies only to jury trials or actions tried without a jury. There is no provisions under the said rule for the filing of a "Motion for New Trial" where the case has been heard by the Court on motions for summary judgment.

HOFFMAN, KEMPER &
JOHNSON,
By WYATT JOHNSON,
Attorneys for Air Line Pilots
Association, R. W. Rivenbark
and R. M. Tedlock.

1115 duPont Building,
Miami, Florida.

Certificate of Service.

I hereby certify that copies of the foregoing Motion of defendants, Air Line Pilots Association, R. W. Rivenbark and R. M. Tedlock, to Strike Motion for New Trial were

mailed by me this 14th day of December, 1956, to the following:

Charles M. Moon and Gambrell, Harlan, Russell, Moye & Richardson; 516 Ingraham Building, Miami 32, Florida; Attorneys for Defendants, Eastern Air Lines, Inc., S. L. Shannon and George A. Smith.

WARD & WARD,
Attorneys for Plaintiff.

1214 duPont Building,
Miami, Florida.

WYATT JOHNSON,
Of Counsel for Defendants, Air Line Pilots Association, R. W. Rivenbark and R. M. Tedlock.

On December 20, 1956 OPPOSITION OF DEFENDANTS EASTERN AIR LINES, INC., S. L. SHANNON and GEORGE A. SMITH TO PLAINTIFF'S MOTION FOR NEW TRIAL was filed in the words and figures as follows:

(Title Omitted.)

The motion for new trial consists primarily of a restatement of points previously presented and thoroughly discussed and answered in documents filed with this Court. Therefore, we will not burden the Court with a repetition of arguments previously made.

Plaintiff raises one new point which requires correction. At pages 9 and 10 of his motion he states:

"2. Mr. Shannon, one of the four members of the Grievance Board, became the chief witness for Eastern Air Lines, Inc. That Company should have substituted a member other than Shannon, or Shannon should not

have been permitted to testify over the objection of Mr. Bennett, the attorney for Captain Woolley."

The Complete answer to that contention appears at page 40 of the transcript of the hearing before the System Board of Adjustment on June 20, 1956 (Exhibit K attached to Answer of Eastern, et al.):

"Mr. Harlan: . . . . . The evidence which we will present on behalf of the Company necessarily must be presented by Mr. Shannon because, as you can appreciate from what happened which has already gone into the record, practically all of this was handled directly by Mr. Shannon himself. That being so, although Mr. Shannon is on the System Board, I am going to ask that he give the necessary facts from the Company's point of view.

"Mr. Bennett:
I see no objection to that."

We respectfully submit that the motion for new trial should be denied.

Respectfully submitted,
GAMBRELL, HARLAN, RUSSELL, MOYE & RICHARDSON,
By W. GLEN HARLAN.

825 Citizens & Southern
National Bank Building,
Atlanta 3, Georgia.

CHARLES M. MOON,
(Charles M. Moon).

516 Ingraham Building,
Miami 32, Florida.

Certificate of Service.

I, W. Glen Harlan, one of the attorneys for Defendants Eastern Air Lines, Inc., S. L. Shannon and George A. Smith, hereby certify that I have this day served the foregoing document on plaintiff by mailing the same to his attorney, postage prepaid, addressed to Mr. W. G. Ward, Ward and Ward, 1229 Alfred I. duPont Building, Miami 32, Florida, and on defendants Air Line Pilots Association, International, R. W. Rivenbark and R. M. Tedlock, by making the same to their attorney postage prepaid, addressed to Mr. Wyatt Johnson, Hoffman, Kemper & Johnson, 1113 Alfred I. duPont Building, Miami 32, Florida.

This 19th day of December, 1956.

W. GLEN HARLAN,
Of Counsel for Defendants Eastern Air Lines, Inc., S. L. Shannon and George A. Smith.

On January 11, 1957 ORDER DENYING PLAINTIFF'S PETITION FOR REHEARING, styled "Motion for New Trial, etc., was filed in the words and figures as follows:

(Title Omitted.)

This cause having come on to be heard on the 4th day of January, 1957, upon the Plaintiff's Petition for Rehearing (styled "Motion For New Trial, etc.," and filed on December 13, 1956) of the Summary Judgment In Favor Of The Defendants entered by the Court on

the 4th day of December, 1956, and the Court having heard argument of counsel and having granted counsel leave to file memoranda subsequent to said hearing, which memoranda have been filed and considered by the Court, it is, therefore,

Ordered And Adjudged that the said Petition For Rehearing (styled "Motion For New Trial, etc.") be and the same is hereby denied.

Done And Ordered in chambers at Miami, Florida, this 10th day of January, 1957.

EMETT C. CHOATE,
United States District Judge.

On February 1, 1957 NOTICE OF APPEAL by Plaintiff was filed in the words and figures as follows:

United States District Court, Southern District of Florida, Miami Division.

Paul S. Woolley, Plaintiff-Appellant.

vs. No. 7173-M-Civil.

Eastern Air Lines, Inc., a Delaware corporation, The Air Line Pilots Association, International, an Association having its principal place of business in Chicago, Illinois, and R. W. Rivenbark, S. L. Shannon, George A. Smith and R. M. Tedlock, individually and as constituting the members of the Eastern Air Lines Pilot System Board Of Adjustment, under the Railway Labor Act, 45 USCA, Paragraph 184, and Section 3 of 45 USCA, Paragraph 153, under agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by The Air Lines Pilots Association, International, Defendants-Appellees.

Notice is hereby given that the plaintiff, Paul S. Woolley, hereby appeals to the United States Court of Ap-

peals for the Fifth Circuit from the summary judgment and the final judgment in favor of the defendants and against the plaintiff, both entered on the 4th day of December, 1956, and also plaintiff appeals from the order of the Court denying plaintiff's petition for rehearing (styled "Motion for New Trial"), entered January 10, 1957.

WARD & WARD,
By W. G. WARD,
(W. G. Ward),
Attorneys for Plaintiff-
Appellant Paul S. Woolley.

1240 duPont Building,
Miami, Florida.

W. G. WARD,
(W. G. Ward),
Of Counsel for Plaintiff-
Appellant.

1240 du Pont Building,
Miami, Florida.

February 1st., 1957.

On February 1, 1957 COST OF BOND ON APPEAL was filed in the words and figures as follows:

(Title Omitted.)

Know All Men By These Presents, that the undersigned Paul S. Woolley, Plaintiff-Appellant, as principal, is held and firmly bound unto Eastern Air Lines, Inc., a Delaware corporation, The Air Line Pilots Association, International, an Association having its principal place

of business in Chicago, Illinois, and R. W. Rivenbark, S. L. Shannon, George A. Smith and R. M. Tedlock, individually and as and constitutiing the members of the Eastern Air Lines Pilots System Board of Adjustment, under the Railway Labor Act, 45 USCA, Paragraph 184, and Section 3 of 45 USCA, Paragraph 153, under agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by The Air Line Pilots Association, International, Defendants-Appellees, in the sum of Two Hundred Fifty Dollars ($250.00) to be paid to the said Defendant-Appellees, their attorneys, successors or assigns, to which payment I bind myself, my heirs, legal representatives and assigns.

Sealed with my seal and dated this the 1st day of February, 1957.

The codition of this bond is as follows:

Whereas, on the 4th day of December, 1956, in an action in the District Court of the United States, in and for the Southern District of Florida, Miami Division, wherein Paul S. Woolley was plaintiff and Eastern Air Lines, Inc., et al., were defendants, number 7173-M-Civil, the said District Court entered a summary judgment and a final judgment in favor of the defendants and against the plaintiff, and on the 10th day of January, 1957 entered an order denying plaintiff's petition for rehearing (styled "Motion for New Trial"), and whereas an appeal has been duly entered by the said Paul S. Woolley, plaintiff, to the United States Court of Appeals for the Fifth Circuit, by notice of appeal filed on the 1st day of February, 1957, from said orders;

Now, the condition of this bond is that if the said Paul S. Woolley shall prosecute his appeal to effect and shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the said United States Court of Appeals for the Fifth Circuit may award against the said Paul S. Woolley if the judgment is modified, or in any other event, then this obligation to be void; otherwise to remain in full force and effect.

In lieu of a surety, the sum of Two Hundred Fifty Dollars ($250.00) has been deposited with the Clerk of the United States District Court in and for the Southern District of Florida.

PAUL S. WOOLLEY,
(Paul S. Woolley),
As principal.

(Seal)

Witnesses:
B. C. BREYER,
JANET KENNEDY.

On February 12, 1957 PETITION FOR ORDER ON EXHIBITS ON APPEAL was filed in the words and figures as follows:

(Title Omitted.)

Comes now the Plaintiff-Appellant, Paul S. Woolley, and respectfully shows unto the Court that he has heretofore filed his Notice of Appeal on the first day of February, 1957; that he has posted his cost bond in the amount of $250.00; that he has certified and directed the Clerk to prepare the record which consists of the

pleadings in this cause, together with the Motions for Summary Judgment.

Your Plaintiff-Appellant, petitioner herein, respectfully shows unto the Court that attached to the complaint filed by the plaintiff, Paul S. Woolley, is a printed agreement between Eastern Air Lines, Inc. and The Air Pilots in the service of Eastern Air Lines, Inc., as represented by The Air Line Pilots Association, International, effective July 1, 1954, which is 68 pages in length.

Also, attached to the answers of the defendants, but filed separately, is a typewritten transcript of hearings In re Grievance of Paul S. Woolley before the members of the System Board of Adjustment, Eastern Air Lines, consisting of approximately 263 pages.

Your petitioner respectfully shows that these two documents were treated as exhibits in the consideration of the respective Motions for Summary Judgment and so referred to in the Opinion of the Court.

Your petitioner prays that the Court will enter its order directing the Clerk to forward the two original exhibits now on file with this Court, as separate exhibits in the original state for consideration by the United States Court of Appeals, Fifth Circuit, in lieu of filing copies and printing the same.

Your petitioner further says that he has designated as the record on appeal the following instruments:

Copy of the complaint of Paul S. Woolley.

Copies of all defensive pleadings filed in said cause by the several defendants.

Typewritten copies of exhibits which are attached both to the complaint, to the answers and to plaintiff's Motion for Summary Judgment.

In addition thereto, petitioner has designated to be included in the record on appeal

Plaintiff's Motion or Petition for Rehearing (styled Motion of Plaintiff for New Trial).
and

Order of the Court granting Summary Judgment in favor of Defendants.

Final Judgment in favor of Defendants.

Order denying Plaintiff's Petition for Reharing.

WARD & WARD,
By W. G. WARD,
(W. G. Ward).
Attorney for Plaintiff-Appellant, Paul S. Woolley, Petitioner.

1240 duPont Building,
Miami, Florida.

Filed before me this 12 day of February, 1957.

EMETT C. CHOATE,
United States District Judge.

I hereby certify that copy of the foregoing Petition was this 12th day of February, 1957 mailed to Messrs. Charles M. Moon, 516 Ingraham Bldg., Miami, Florida, Gambrell, Harlan, Russell, Moye & Richardson, 825 The Citizens & Southern National Bank Bldg., Atlanta 3, Georgia, and Hoffman, Kemper & Johnson, 1115 duPont Bldg., Miami, Florida, attorneys for Defendants-Appellees.

W. G. WARD,
(W. G. Ward).

On February 12, 1957 ORDER ON EXHIBITS ON APPEAL was filed in the words and figures as follows:

(Title Omitted.)

This cause coming on to be heard upon the petition of Plaintiff-Appellant, Paul S. Woolley, for an order permitting and directing that the original exhibits enumerated in said petition be sent to the Clerk of the United States Court of Appeals for the Fifth Circuit for consideration by that Court on appeal as separte exhibits and not as a part of the record on appeal to be printed, and the Court being fully advised in the premises, It Is Thereupon

Considered, Ordered And Adjudged that the Clerk of this Court be and he is hereby directed to forward the original exhibits enumerated as follows:

Printed Agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the service of Eastern Air Lines, Inc. as represented by The Air Line Pilots Association, International, effective July 1, 1954, 68 pages in length, which is Exhibit 1 to Complaint of Plaintiff.

Typewriteen Transcript of Hearings In Re Grievance of Paul S. Woolley before the members of the System Board of Adjustment, Eastern Air Lines, consisting of approximately 263 pages, which is an exhibit to the answers of the defendants,

to the Clerk of the United States Court of Appeals for the Fifth Circuit, for consideration by that Court on appeal as separate exhibits and not as a part of the record on appeal to be printed.

Done And Ordered at Miami, Dade County, Florida, this 12th day of February, A. D. 1957.

EMETT C. CHOATE,
District Judge.

On February 15, 1957 DESIGNATION OF RECORD ON APPEAL was filed in the words and figures as follows:

(Title Omitted.)

Paul S. Woolley, Plaintiff, as Appellant in the above entitled cause, does hereby designate for inclusion in the record on appeal the following:

1. Complaint of Paul S. Woolley, with Exhibits 2, 3 and 4 attached thereto.

Note: The original of Exhibit 1, being a printed agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the service of Eastern Air Lines, Inc., is being transmitted to the Court of Appeals for the Fifth Circuit pursuant to order of this Court.

2. Answer of Defendants Air Line Pilots, International, and Rivenbark and Tedlock.

Note: The original of Exhibit A, being a typewritten transcript of Hearings In Re Grievance of Paul S. Woolley before the members of the System Board of Adjustment, Eastern Air Lines, is being transmitted to the Court of Appeals for the Fifth Circuit pursuant to order of this Court.

3. Answer of Defendants Eastern Air Lines, Inc.,. Shannon and Smith, with Exhibits A through J attached thereto.

Note: Exhibit K is a duplicate of Exhibit A to the answer of Defendants Air Line Pilots International, et al., being typewritten transcript of Hearings In Re Grievance of Paul S. Woolley before members of the System Board of Adjustment, Eastern Air Lines, the original of which is being transmitted to the Court of Appeals for the Fifth Circuit pursuant to order of this Court.

4. Motion of Defendants Air Line Pilots Association, Int., Rivenbark and Tedlock for Summary Judgment.

5. Motion of Defendants Eastern Air Lines, Inc., Shannon and Smith to Dismiss and for Summary Judgment.

6. Motion of Plaintiff for Summary Judgment, with exhibit.

7. Summary Judgment in favor of Defendants.

8. Final Judgment in favor of Defendants.

9. Motion of Plaintiff for New Trial under Rule 59, Federal Rules of Civil Procedure.

10. Motion of Defendants Air Line Pilots Association, Int., Rivenbark and Tedlock to Strike Plaintiff's Motion for New Trial.

11. Opposition of Defendants Eastern Air Lines, Inc., Shannon and Smith to Plaintiff's Motion for New Trial.

12. Order denying Plaintiff's Petition for Rehearing (styled "Motion for New Trial").

13. Notice of Appeal to United States Court of Appeals, Fifth Circuit.

14. Cost Bond on Appeal.

15. Petition for Order on Exhibits on Appeal.

16. Order on Exhibits on Appeal.

17. Designation of Contents of Record on Appeal.

WARD & WARD,
By W. G. WARD,
Attorneys for Plaintiff-Appellant, Paul S. Woolley.

1240 duPont Building,
Miami, Florida.

I hereby certify that copy of the foregoing Designation of Contents Of Record On Appeal was this 15th day of February, 1957 mailed to Messrs Charles M. Moon, 516 Ingraham Bldg., Miami, Florida, Gambrell, Harlan, Russell, Moye & Richardson, 825 The Citizens & Southern National Bank Bldg., Atlanta 3, Georgia, and Hoffman, Kemper & Johnson, 1115 du Pont Bldg., Miami, Florida, attorneys for Defendants-Appellees.

W. G. WARD,
(W. G. Ward).

CLERK'S CERTIFICATE.

United States of America,
Southern District of Florida, ss.

I, JULIAN A. BLAKE, Clerk of the United States District Court, in and for the Southern District of Florida, and as the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 436, inclusive, contain a true, full and complete copy of all such portions of the record, proceedings, and evidence in cause styled Paul S. Woolley versus Eastern Air Lines, Inc., The Air Line Pilots Association, International, R. W. Rivenbark, S. L. Shannon, George A. Smith and R. M. Tedlock, individually and as and constituting the members of the Eastern Air Lines Pilots System Board of Adjustment, under the Railway Labor Act, 45 USCA, Paragraph 184, and Section 3 of 45 USCA, Paragraph 153, under agreement between Eastern Air Lines, Inc. and The Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by the Air Lines Pilots Association, International, number 7173-Miami-Civil, as appear upon the record and files of my office that have been designated by written directions of the appellant to be included in this record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida, on this the 4th day of March, A. D. 1957.

JULIAN A. BLAKE,
As Clerk of the United States District Court in and for the Southern District of Florida.

By EARLE F. SPRIGG,
Chief Deputy Clerk.

(Seal)

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JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No. 822.

PAUL S. WOOLLEY,
Petitioner,

vs.

EASTERN AIR LINES, INC., a Delaware Corporation, THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, an Association Having Its Principal Place of Business in Chicago, Illinois, and R. W. RIVENBARK, S. L. SHANNON, GEORGE A. SMITH and R. M. TEDLOCK, Individually and As and Constituting the Members of the EASTERN AIR LINES PILOTS SYSTEM BOARD OF ADJUSTMENT, under the Railway Act, 45 U.S.C.A., Paragraph 184, and Section 3 of 45 U.S.C.A., Paragraph 153, under Agreement Between Eastern Air Lines, Inc., and The Air Line Pilots in the Service of Eastern Air Lines, Inc., As Represented by The Air Line Pilots Association, International, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT.

WILLIAM GRESHAM WARD,
1240 duPont Building,
Miami 32, Florida,
Attorney for Petitioner.

WARD & WARD,
1240 duPont Building,
Miami 32, Florida.

INDEX

Opinions and Judgment Below in the United States Court of Appeals, 5th Circuit, Dated December 5, 1957 (Copies of the Opinion and Judgment are attached as Appendices to this Petition) 1

Jurisdiction under Rule 19, Sub-section (b) Outlined .. 1-2

Analysis of That Part of the Opinion of the Court of Appeals, 5th Circuit, in Which That Court Certifies That in Its Opinion the Supreme Court of the United States Has Not Passed upon the Question Submitted 2

Analysis of Factual Matters Which Raised the Question of Federal Jurisdiction 3

Analysis of Provisions of Bargaining Contract under the National Railway Labor Act Between Eastern Air Lines, Inc. and Air Line Pilots in the Service of Eastern Air Lines, Inc. 4-6

Question Presented As to Whether a Resignation Given by an Employee Protected under the National Railway Labor Act in 1950 As a Condition for Re-employment of a Pilot Can Be Merely Accepted by the Company in 1956 Without the Company Following the Procedure Outlined in Section 29 of the Bargaining Contract 7-8

Decision of System Board of Adjustment of Eastern Air Lines Upholding Right of Company to Accept a Six Year Old Resignation, but Without Any Findings As to a Discharge for Cause under the Provisions of the Contract 8-9

Analysis of Suit Filed by Petitioner, Paul S. Woolley, Pilot, in the United States District Court, Southern District of Florida 10-11

Analysis of Judgment of District Court Granting Summary Judgment in Favor of Eastern Air Lines, Inc., Against Petitioner 12-13

Analysis of Opinion of Circuit Court of Appeals, 5th Circuit, in which That Court Held That the Question

Presented Has Not Been Passed upon by the Supreme Court of the United States, in Which That Court, Following Its Previous Decision of *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13, Upholds the Claim of Exclusive and Final Jurisdiction of the System Board of Adjustment in Similar Type Cases (Judgment and Opinion Attached As Appendices to Petition) 13-14

Questions Presented for Review 14

1. Were the United States District Court for the Southern District of Florida and the United States Court of Appeals, 5th Circuit, Correct in Holding under the National Railway Labor Act That a System Board of Adjustment Has Final Jurisdiction to Determine Any and All Employment Relations Between the Company and an Air Line Pilot, or Should the Courts Have Held That the System Board of Adjustment Only Had Jurisdiction on Matters Arising Out of the Contract Concerning the Procedure and Grounds for Discharge 14-15

2. Can an Air Line Company Coming Within the Provisions of the National Railway Labor Act Demand a Resignation from a Pilot Then Covered under the Provisions of the Bargaining Agreement As a Condition for Re-employment and then, Six Years Later, After Continuous Employment and After New Contracts Had Been Re-negotiated and Signed, Deprive the Pilot of His Contractual Rights and the Procedure Provided for Discharge in the New Contract 15-16

3. When It Is Admitted That the Discipline Procedure Leading Up to a Discharge Action by an Air Line Against One of Its Employees Who Is a Third Party Beneficiary to the Collective Bargaining Agreement Has Not Been Followed, and Admittedly the System Board of Adjustment Did Not Permit Any Testimony to Be Introduced or Considered on the Grounds for Discharge, but Simply

in Support of a Six Year Old Resignation, Did the Lower Court and the United States Court of Appeals Have the Right to Determine in the Nature of a De Novo Trial That Petitioner Had the Equivalent of Due Process and Adjudge on the Merits That There Might Have Been Sufficient Grounds for Discharge, and That the Procedure Used in Merely Accepting the Old Resignation Was a Satisfactory Substitute for the Procedure Established under the Contract 16-18

4. Can the Federal Courts on Reviewing an Action by a System Board of Adjustment under the National Railway Labor Act, on the One Hand Hold That the Decision of the System Board of Adjustment on a Resignation of an Employee Was Final and Conclusive, and That the District Court Had No Right to Review That Action, and When That Was the Only Question Determined by the System Board of Adjustment, Can the Federal Courts Then Reach out De Novo and Declare What the Merits of the Decision Would Have Been If the Section 29 Discipline Procedure Had Been Followed and Adequate Testimony Taken, When from the Very Nature of the Opinions of the Said Federal Courts It Was Conceded That the System Board of Adjustment Did Not Consider That Point 18

Analysis of Decision of 5th Circuit, Circuit Court of Appeals in *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13—January 19, 1956 18-20

5. Where an Air Line Employee, Then Being a Third Party Beneficiary under the Bargaining Contract under the National Railway Labor Act, Is Suspended for an Alleged Violation in the Spring of 1950, and Where No Final Determination Was Made One Way or the Other on That Suspension Right, and the Suspension Was Lifted and the Employee Was Reinstated on July 28, 1950, with Full Seniority Rights, but As a Condition Therefor the Company Exacted an Open Letter of Resig-

nation, Was That Resignation Effective After August 1, 1950, When the Employee Resumed His Employment, and Could the System Board of Adjustment or the Lower Federal Courts Thereafter Review the Reasons for That Suspension and Reinstatement, When Admittedly the Bargaining Contract Was Re-negotiated and a New Contract Entered Into in 1954 Which Outlined under Section 29 Thereof the Only Means and Methods of a Discharge for Cause of an Employee 21-24

6. Where an Air Line Employee under the National Railway Labor Act Has Served for Six Years After He Had Given a Resignation in 1950 As a Condition for Re-employment, and Where the Only Grounds by Which the Employment Was Severed in February, 1956, Were a Mere Letter from the Company Accepting the Six Year Old Resignation, and Where There Was No Provision in the Bargaining Agreement of 1954 for the Treatment of the Employees in a Different Class, and Where the System Board of Adjustment, Acting Without Any Contractual Background, Upheld the Acceptance of the Resignation As a Termination of the Employment and Specifically Did Not Pass on or Take Jurisdiction of Any Complaint for Grounds for Discharge under Section 29 of the 1954 Contract, Was It Proper for the United States District Court, Southern District of Florida, or the United States Court of Appeals, 5th Circuit, to Reach Out and Interpret That Action As the Equivalent of a Discharge for Cause on a Matter of Substance, and Hold That That Action Was Conclusive on the Employee's Rights, Without Ever Affording to the Third Party Beneficiary Employee the Opportunity to Have the Issues Framed under the Provisions of the Contract or Without Giving the Employee the Right to Present Testimony and Be Heard in Opposition to Any Claim of the Right to Discharge for Cause for Any

Action Which Took Place After August 1, 1950 up to February 6, 1956 23-24

Reasons for Granting of Writ—

1. The United States Court of Appeals, 5th Circuit, Has Rendered a Decision in Conflict with the Decision of the United States Court of Appeals for the District of Columbia Circuit, and United States Court of Appeals, 2nd Circuit.

   This Decision of the United States Court of Appeals, 5th Circuit, Is in Conflict with the Decision of *Edwards* v. *Capital Airlines*, 176 F. 2d 755, Which Was a Decision of the United States Court of Appeals, District of Columbia Circuit, and Which Decision Is Also in Conflict with the Decision of *Rychlik* v. *Pennsylvania Railroad Company*, 229 F. 2d 171—United States Court of Appeals, 2nd Circuit 24-26

2. The United States Court of Appeals, 5th Circuit, Has Decided an Important Question of Federal Law Which Has Not Been but Should Be Settled by This Court.

   See Appendix—Opinion of Court of Appeals, 5th Circuit, in Which That Point Is Determined in the Opinion Itself.

   Also see Opinion by This Court of *Pennsylvania Railroad Company* v. *Rychlik*, 77 S. Ct. 421, 352 U.S. 480 26

3. The United States Court of Appeals, 5th Circuit, Has Decided a Federal Question in a Way in Conflict with the Applicable Decisions of This Court.

   This Decision Is in Conflict with the Decision in the Case of *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173, and in Conflict with the Opinion of This Court in *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325 ..... 20, 27

4. The United States Court of Appeals, 5th Circuit, in the Decision of This Case Has So Far Departed from the Accepted and the Usual Course of Judicial Proceedings and Has Sanctioned Such a Departure by a Lower Court As to Call for an Exercise of This Court's Power of Supervision.

The Case of *Ellerd* v. *Southern Pacific Railroad Co.*, 241 F. 2d 541, Holds That Where an Employee Has Been Deprived of Due Process of Law in Action for Reinstatement Before Adjustment Board, That Ruling Is Subject to Review by the Court 29-30

In the Case of *Nilva* v. *United States*, 77 S. Ct. 431, 352 U.S. 385, Four Members of This Court Held That under the Doctrine of Due Process of Law under the Federal Constitution One Accused Is Entitled to a Fair and Regular Trial, and That Doctrine When Applied to the Facts in This Case Will Show That Captain Paul S. Woolley under the Decision of the Circuit Court of Appeals, 5th Circuit, Was Deprived of Valuable Property Rights and Severed from Gainful Employment Protected to Him under the National Railway Labor Act by Procedures Before the System Board of Adjustment, and by the Action of the United States District Court, Southern District of Florida, Approved by Said United States Court of Appeals, 5th Circuit, Which Violate the Fundamental Concepts of Constitutional Protection and Due Process of Law Guaranteed under the United States Constitution 31-32

Appendix A—

Opinion United States Court of Appeals, 5th Circuit, in Case Number 16585, Paul S. Woolley, Appellant, v. Eastern Air Lines et al., Appellees—Appeal from District Court of the United States, Southern District of Florida—Decided December 5, 1957 ..... A1-A13

Appendix B—

Judgment and Extract from Minutes of December 5, 1957, in Case 16585—United States Court of Appeals, 5th Circuit A14

TABLE OF CASES

Edwards v. *Capital Airlines*, 176 F. 2d 755, 760 ..... 24, 25, 26
Ellerd v. *Southern Pacific Railroad Co.*, 241 F. 2d 541 ..... 29, 30
Moe v. *Eastern Air Lines, Inc.*, 246 F. 2d 215 28
National Railroad Adjustment Board, First Division, Award No. 5269, Docket No. 9519 23
Nilva v. *United States*, 77 S. Ct. 431, 441-2, 352 U.S. 385 31-32
Pennsylvania Railroad Company v. *Rychlik*, 77 S. Ct. 421, 352 U.S. 480, 128 Fed. Supp. 429, 229 F. 2d 171 ..... 26, 27
Poland v. *Glovers District Court of New York*, 111 F. Supp. 675 23
Sigfred v. *Pan American World Airways*, 5th Cir., 1956, 230 F. 2d 13 ..... 13, 18, 19, 20, 29
State ex rel. Murtagh v. *Department of Civil Service*, 42 So. 2d 65-69 23
Steele v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173 27
Transcontinental & Western Air, Inc., v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325 20
Watkins v. *City of Seattle*, 99 P. 2d 427, 432 23

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No.

PAUL S. WOOLLEY,
Petitioner,

vs.

EASTERN AIR LINES, INC., et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

PAUL S. WOOLLEY petitions the Supreme Court of the United States for a review on certiorari, reviewing the decision of the United States Court of Appeals for the Fifth Circuit in case number 16585, opinion rendered December 5, 1957, mandate issued January 24, 1958, in which the decision of the United States District Court in and for the Southern District of Florida was affirmed.

The grounds upon which your petitioner seeks to invoke the jurisdiction of the Supreme Court of the United States

are based upon the provisions of Rule 19, sub-section (b), as follows:

1. The United States Court of Appeals, 5th Circuit, has rendered a decision in conflict with the decision of the United States Court of Appeals for the District of Columbia Circuit, and United States Court of Appeals, 2nd Circuit.

2. The United States Court of Appeals, 5th Circuit, has decided an important question of Federal law which has not been but should be settled by this Court.

3. The United States Court of Appeals, 5th Circuit, has decided a Federal question in a way in conflict with the applicable decisions of this Court.

4. The United States Court of Appeals, 5th Circuit, in the decision of this case has so far departed from the accepted and the usual course of judicial proceedings and has sanctioned such a departure by a Lower Court as to call for an exercise of this Court's power of supervision.

In the opinion above referred to, which is reported in 250 F. 2d 86, rendered December 5, 1957, the United States Court of Appeals for the Fifth Circuit on two occasions said (p. 90):

> "The Supreme Court has not directly passed on the question here posed."

Again later in the opinion the Court said (p. 91):

> "As has been heretofore said, the Supreme Court has not held, as has this Court in the several cited cases, that, granted jurisdiction in the Board, its decisions on either factual or legal or mixed issues, are not reviewable in court."

The case in the United States of Appeals for the Fifth Circuit involves a question of federal law under the National Railway Labor Act, 45 U.S.C.A., Paragraph 184.

As appears from the opinion, Paul S. Woolley was a captain pilot employed by Eastern Air Lines. He had been in the employ of said company for about 20 years. In the winter of 1950 Eastern Air Lines had suspended Mr. Woolley, contending that he had engaged in unsafe flying practice and in certain dissensions with a tower operator at the Detroit Airport.

At that time Captain Woolley as a pilot was represented by the Air Line Pilots Association as a bargaining representative.

A petition to review that discharge was filed under the processes set forth in the then contract between Eastern Air Lines, Inc. and the Air Line Pilots Association for the use and benefit of the air line pilots connected with Eastern Air Lines.

For reasons not necessary to mention herein, the Company did not press the charges against Captain Woolley, and his guilt or innocence of the charges was not determined.

In July, 1950, he was put back to work. The bargaining representative, Air Line Pilots Association, of its own volition and not through any grievance committee hearings or any official hearings, arranged for Captain Woolley to be re-employed, but as a condition for the re-employment, not for a discharge, Captain Woolley was required to sign a letter of resignation which could be accepted by Eastern's Vice-President in Charge of Operations any time in the future.

Captain Woolley gave that letter of resignation not as a condition for severing his employment, but as a condition to continuing with his employment or re-employment, as the case may be.

Tr. 15 shows an agreement between Eastern Air Lines, Inc., and the Air Line Pilots in the Service of Eastern Air Lines, Inc., as represented by Air Line Pilots Association, which became effective July 1, 1954.

Captain Woolley was an employee and one of the Senior Captains at that time.

Section 29 of said contract provided, among other things, that (Tr. 62):

> "A pilot shall not be disciplined or dismissed from the Company without notification in writing as to any such action, and such pilot shall not be disciplined or dismissed without an investigation and hearing provided that the pilot makes written request for an investigation and hearing within seven (7) days after receiving such notification."

It is then provided (Tr. 63):

> "Prior to such investigation and hearing, the Company shall furnish such pilot a copy of the precise charge or charges against him, and he shall not be required to give testimony or furnish evidence prior to the actual time of the investigation and hearing. He shall be given the necessary time in which to prepare and to secure the presence of witnesses and shall have the right to be represented by an employee of the Company of his choice or by his duly accredited representative or representatives."

These are the provisions in the contract with reference to notification of discharge or suspension, the right to be heard fully before the Junior Executive of the Company,

and then with right of appeal to the Senior Vice-President in Charge of Operations (Tr. 63).

After hearing before the Senior Officer it was provided (Tr. 64):

> "Within ten (10) days after the close of such appeal hearing, the Company shall announce its decision in writing and shall furnish the pilot, or his duly accredited representative a copy thereof."

Further provision is made for taking of testimony in the hearing before the Senior Operations Officer of Eastern Air Lines.

Then it is provided in paragraph 6 of Section 29 (Tr. 65) that if any appeal was to be made by the pilot from that decision of the Senior Officer, it should be made to the Eastern Air Line Pilots System Board of Adjustment as provided for in the agreement between Eastern Air Lines, Inc., and Air Line Pilots in the Service of Eastern Air Lines, Inc.

That agreement under which the Grievance Board was constituted is shown at Tr. 78. It provided, among other things, that in compliance with Section 204, Title II of the Railway Labor Act as amended, there was established a System Board of Adjustment for the purpose of adjusting and deciding disputes arising under the terms of the Pilots Agreement and which are properly submitted to it. The Board was to consist of four members, two of whom should be selected and appointed by the Association and two by the Company.

Paragraph (e) provides (Tr. 80):

> "The Board shall have jurisdiction over disputes between any employee covered by the Pilots Agreement and the Company growing out of grievances or

out of interpretation or application of any of the terms of the Pilots Agreement."

Paragraph (f) provides (Tr. 80):

> "The Board shall consider any dispute properly submitted to it by the President of the Association or by the Chief Operating Officer of the Company, when such dispute has not been previously settled in accordance with the terms provided for in the Pilots Agreement."

In paragraph (h) (Tr. 81) provision was made for the operation and method of the appeal, and as part of that paragraph it was provided (Tr. 82):

> "No matter shall be considered by the Board which has not first been handled in accordance with the appeals provisions of the Pilots Agreement, including the rendering of a decision thereon by the Chief Operating Officer of the Company."

Under paragraph (n) (Tr. 83):

> "Nothing herein shall be construed to limit, restrict or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under law with respect to disputes which are not decided under the procedure established herein."

While that contract and the Grievance Board provisions were still in force and effect, on February 20, 1956, Eastern Air Lines wrote a letter to Captain Woolley purporting to accept the resignation which he had given on July 28, 1950. The only notice given is referred to in the printed opinion

(p. 3) in which the Vice-President of Eastern Air Lines wrote Woolley as follows:

> "* * * I personally do not feel that you have been handling your job in the proper manner and therefore your resignation as an employee of Eastern Air Lines, Inc., is hereby accepted to become effective immediately."

Woolley replied to the Company by stating that he had not had the benefit of the notices called for under Section 29 of the bargaining agreement; that there had been no investigation or hearing or notification of specific charges (Court's Opinion, p. 3).

The answer by the Company is copied in the Court's opinion (Letter of February 27, 1956, pp. 4-5):

> "Dear Mr. Woolley:
>
> This will acknowledge your letter of February 27, 1956. My letter to you dated February 20, 1956, was simply an acceptance of your resignation. Consequently I do not think Section 29 of the Agreement between Eastern Air Lines and the Air Lines Pilots Association is applicable. However, if you wish to discuss the matter with me I will be glad to talk with you on Wednesday, February 29, 1956, at 10:00 a. m. in my office.
>
> For your information, my action in accepting your resignation was based in large part on the unsafe flying of Flight 644 of February 5, 1956 enroute into Boston, and your handling of Flight 647 of February 6, 1956, enroute into Miami. Your conduct in handling those flights confirms other information which has come to my attention from time to time."

The Company at no time followed the procedure set forth in Section 29 of the contract. There were never any specific charges filed under the terms of the contract of

1954. There was no procedure followed of a hearing before the Junior Officer or before the Senior Officer. No testimony was taken before the Senior Officer. No record was made and no report was filed according to that requirement.

This shows further by the letter of March 2, 1956, from S. L. Shannon, Senior Vice-President (Opinion, p. 5):

> "This is to confirm what I told you February 29th in my office when you came in to discuss your case. I am not changing my decision, and my letter to you of February 20, 1956 still stands."

There was still no effort to follow the discipline procedure set forth in Section 29, nor was there any actual issue raised under the Section 29 procedure which would give the Grievance Board any jurisdiction of review.

Nevertheless, the Grievance Board, otherwise known as the Board of Adjustment, met Woolley and a representative of the Air Line Pilots Association, an attorney working for that Association, appeared at the Grievance Hearing. Eastern Air Lines was represented at the hearing by its counsel. S. L. Shannon, the Senior Vice-President who had accepted the resignation after six years, was a member of that Board.

The record in the case clearly disclosed that the attorney for Woolley strenuously objected to the hearing and sought the adjudication that the Board had no jurisdiction because a resignation given in 1950 as a condition for re-employment could not be valid grounds for a discharge six years later.

The Board only considered the point as to whether or not the Company had a right to accept the letter of resignation. It did not pass upon or purport to pass upon

the merits of the discharge or whether the discipline procedure required under Section 29 had been followed. The decision of the Board was as follows (Tr. 88):

"The Grievant herein contends that his employment as an airline captain with the Company was wrongfully terminated in that his purported letter of resignation, dated July 28, 1950 and accepted by the Company February 27, 1956, was not intended to have effect as such and that there was not sufficient cause or ground for his involuntary dismissal.

The Board finds:

1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association, International, on the one hand and the Company on the other hand;

2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

Decision of the Board:

Grievance denied.

Signed at Miami, Florida August 1, 1956."

See, also, same excerpt from Opinion, page 89.

Captain Woolley then filed a suit in the United States District Court, Southern District of Florida, in which he sought a declaratory judgment determining his rights, and asked for a mandatory injunction requiring the Board of Adjustment to cancel and discharge its adverse order. But here the opinion misconstrues the relief the petitioner sought. The relief sought is set forth Tr. 13.

It was first asked that the District Court declare that a resignation given in 1950 as a condition for re-employment could not be used as a basis for a discharge simply by accepting the resignation without any other grounds, in 1956. In other words, the relief sought was a declaratory decree to the effect that the pilot could only be disciplined or discharged under the procedure set forth in Section 29 of the contract; that since the bargaining agreement was binding upon all employee pilots, he, Woolley, had a vested right and a constitutional contractual right to be discharged only under the provisions of that contract; that no provisions were contained in any bargaining contract whereby the Air Line Pilots Association or Eastern Air Lines could have separate or distinctive types of employment; that the Air Line Pilots Association had to represent all employee pilots on the same basis, and all had the same right.

The suit simply asked that the Court in effect declare that the practice of requiring a resignation in advance of an employment was contrary to public policy and was a violation of the terms of the Railway Labor Act.

The Court was asked to order that the Grievance Board be directed to meet and to rescind its order and findings upholding the power of Eastern Air Lines to simply accept the six year old resignation and to order that it had power only to pass upon disputes which came

under the jurisdictional grounds in the contract, and not otherwise.

Paragraph b of the prayer (Tr. 13) requested the Court, upon setting aside the decision of the Grievance Board of August 1, 1956, to reinstate the plaintiff to his full rights and seniority in the following manner: that upon the setting aside of the Grievance Committee or Board improper award, that the Court direct that

> "plaintiff be restored to all back salary and fringe benefits by way of seniority, and that plaintiff's rights will be protected unless and until the said Eastern Air Lines, Inc., shall have filed an appropriate order of discharge for cause, and the defendant Eastern Air Lines Pilot System Board of Adjustment has had a complete and adequate hearing within the confines of its jurisdiction and either granted or denied the grievance complained of, if any, for cause." (Tr. 13).

The opinion of the Court completely misconstrued the relief sought because, as set forth in the opinion, the Court took this view (Opinion, p. 89):

> "It will be seen from the prayers of the complaint that its purpose was to review and have set aside the decision of the System Board of Adjustment."

In a sense that is true, but actually, petitioner was not questioning the merits of a hearing of the Board of Adjustment under the Railway Labor Act, because it was contended no such hearing was ever held. We were simply attempting to have the Court set aside the action of Eastern Air Lines whereby they attempted to discharge a third party beneficiary under the bargaining contract simply by accepting a six year old resignation, when there was no provision in the bargaining contracts for such a special type of employment. The bargaining agreement of 1950 was similar to the renewal agreement of 1954.

The only thing we asked the Court to do was to hold that that was not a proper ground for discharge, and that it did not come within the grievance or discipline hearings or jurisdiction of the Junior Officer, the Senior Vice-President or the Board of Adjustment.

The Lower Court (United States District Court, Southern District of Florida) granted a summary decree in favor of the Eastern Air Lines Association and the other defendants by stating (Tr. 381):

> "It is unquestionable that the System Board of Adjustment possesses the power, as a tribunal of last resort, to deny a grievance of wrongful discharge when that Board finds that the grounds for discharge were for good and sufficient reasons, and that such decision is not reviewable by the Courts. But the Plaintiff contends that the Board in denying his grievance merely went into the question of the unqualified right of the Defendant Eastern to accept a certain letter of resignation which the Plaintiff had sent to Eastern some six years ago as part of a settlement of an altercation which he had with the Company at that time. Plaintiff claims that a discharge based on the acceptance of such a letter of resignation is a wrongful discharge. But the Court is of the opinion that that question need not be decided in this case for the Board patently considered the acceptance as merely a vehicle employed in the discharge and if the Board considered the six year old offense it did so only as a circumstance to be considered along with the 1956 charges."

Then the Lower Court (Tr. 384) summarized statements of counsel before the Adjustment Board which the Court said created the issue:

> " 'I believe that the resignation is valid. It was properly accepted by the Company and that should conclude the case. However, I think we can also show

even if it were not regarded as a discharge case that there was adequate reason for the discharge, and on either of these grounds, the severance of his employment should be upheld by this Board.'"

The Appellate Court, to wit, the United States Court of Appeals, in its opinion even went beyond the position taken by the Lower Court when on page 90 it said:

"The first question that must be resolved, therefore, is posed by the contention of the appellees that in the circumstances here outlined the courts are in effect ousted of jurisdiction. If this contention is correct we need proceed no further in an effort to appraise the correctness of the Adjustment Board's decision.

The Supreme Court has not directly passed on the question here posed. The statute authorizes the creation by air lines of system boards of adjustment to aid in the stated policy of avoiding any interruption to commerce and providing for the prompt and orderly settlement of labor disputes, including those arising out of the interpretation or application of collective bargaining agreements, 45 U.S.C.A., Sec. 151(a). Reference to the various provisions of the Railway Labor Act makes clear that such system boards are given the authority to make final binding decisions touching on the application and construction of collective bargaining agreements, especially if the bargaining agreement expressly includes the right of appeal to such a board and if the articles between the air line and the bargaining agent setting up the system board expressly state, as does that of Eastern Air Lines Pilots System Board of Adjustment, that 'decisions of the Board in all cases properly referable to it shall be final and binding upon the parties thereto.'"

Then the Court relied upon its previous opinions in the case of *Sigfred* v. *Pan American World Airways*, 5th Circuit, 1956, 230 F. 2d 13, and quoted this statement:

" 'In the light of the declared aims of the Act, we also find it to be the intent of Congress to allow the parties to make the awards of such boards final and binding. Therefore, giving normal effect to these words, we refuse to review a challenged ruling of law, there being no question raised regarding the jurisdiction of the board or the regularity of its proceeding.' "

QUESTIONS PRESENTED FOR REVIEW.

We directly challenge the jurisdiction of any Board of Adjustment to do more or to have more jurisdiction than that which was specifically covered in the bargaining contract, or to do other than to follow the procedure set forth in Section 29 of the grievance section. The Board only had the right on review to determine if there was reasonable or good ground for discharge after all of the procedure had been followed through.

We contended then and do contend now that the agreement between the Air Line Pilots Association and Eastern Air Lines above referred to, beginning Tr. 78, in paragraph (e) specifically restricted the Board's jurisdiction over disputes between any employee covered by the Pilots Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of the Pilots Agreement (Tr. 80).

We contend that the pilots agreement made no allowance and no provision and provided for no authority for the Company to make a separate contract of employment with a pilot so that some of the pilots were operating from day to day with resignations hanging over their heads and other pilots not so unfortunate were protected by the bargaining agreements.

The very preamble of the contract referred to (Tr. 18) refers to the fact that

> "The Air Line Pilots Association, International, has furnished to the Company proof that a majority of the Air Line Pilots employed by the Company have designated the Association to represent them and in their behalf negotiate and conclude an agreement with the Company as to hours of labor, wages, and other employment conditions covering the pilots in the employ of the Company in accordance with the provisions of the Railway Labor Act, as amended."

Nowhere, does it appear that there was any exception to their representation, or that the Courts could read into that contract an exception to the effect that the Company could make its own employment agreement with pilots of equal rank by having them give a resignation before they went to work, and then permit them to be fired upon the whim or caprice of an officer.

The point involved here, in addition to the above matters, is that both the United States District Court, Southern District of Florida, and the United States Court of Appeals for the Fifth Circuit, ignored the point involved, that is to say, whether under the Railway Labor Act an employee protected as a third party beneficiary may be deprived of the benefits of the bargaining contract under which he is bound through the method of the employer exacting a resignation which could be held over the head of the employee and exercised at any time.

The Lower Court, as we pointed out above, held that it was not necessary for it to pass on that point because the employee, the Air Line Pilot, had submitted his arbitration and question of discharge to the Adjustment Board, and that it had the right, and the sole, final and exclusive right, to conclude the question of the wrongful discharge, even though the procedure specified in the contract, Section 29, was not carried out.

In effect, the Lower Court held that the employee had the equivalent of a trial under the procedure outlined, although the exact procedure was not followed as required under the contracts.

The Appeal Court, as shown in the Opinion (p. 91), then said:

> "There can be no doubt here that the board had jurisdiction of the dispute, at least as to any challenge by appellant because he invoked its jurisdiction. It cannot therefore be questioned that, in the language of the articles establishing this particular System Board of Adjustment the case was 'properly referable to it.'
>
> We hold therefore that the rule of stare decisis requires that we adhere to the Sigfred and Majors opinions and hold that the complaint did not state a claim against defendants upon which relief could be granted.
>
> As has been heretofore said, the Supreme Court has not held, as has this Court in the several cited cases, that, granted jurisdiction in the Board, its decisions on either factual or legal or mixed issues, are not reviewable in court.
>
> • • •
>
> The Board accepted some of this testimony, as it said, only as bearing on the sufficiency of reasons for accepting the resignation and not to be considered as being sufficient bases for grounds of discharge, if the Board held the resignation ineffective. As we have said, the Board held the evidence constituted 'good and sufficient reason' to accept the resignation.
>
> The trial court equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge, and without expressly deciding whether the action of the defendant air line was an

authorized acceptance of an outstanding resignation or a discharge for cause"

and the appeal opinion quoted from the Lower Court as follows (p. 91):

> "'The issue being thus clearly presented to the Board and the Board having decided that the Defendant Eastern Air Lines acted "for good and sufficient reasons and that the Company did not act arbitrarily or capriciously", this Court does not have any authority to set aside that Board's decision.'"

The opinion continues:

> "We think this decision was correct."

Then the Appellate Court in its opinion, after having stated that the Supreme Court of the United States had never passed squarely on this question, purported to review the evidence which had been considered by the System Board only on the question of the resignation, and apparently retried the case *de novo*.

The error complained of may be briefly summarized as follows:

1. No specific charges were ever filed as required by Section 29 of the contract.

2. No hearing on any specific charges was considered by the Junior Executive. No hearing was held before the Senior Officer or any specific charges filed or any evidence taken. Both the Junior Officer and the Senior Vice-President simply contended that the Company had a right to accept the six-year old resignation.

3. When the System Board was asked to review the proceeding, no additional charges were filed. There was nothing to review except the validity of a six-year old

resignation which had been accepted in February, 1956. The Board itself recognized that limitation and did not purport to find that there were any grounds proven for discharge for cause under Section 29 of the discipline provision of the contract.

Then the Lower Court refused to pass on the only question which the System Board itself passed on, and held that the mixed-up proceedings were the equivalent of a hearing for discharge for cause. The Appellate Court in substance held that any time an air line pilot under the Railway Labor Act certifies any question to the System Board, regardless of whether the procedure had been properly followed, or whether there was any provision in the contract to provide for recognition of a resignation, that that Board, even though it acted wholly without any jurisdiction granted to it under the contract, had the right to pass on collateral questions, and that its decision was final, that the Courts could not review it, and that the pilot was discharged.

In the case of *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13, U.S.C.A. 5, January 19, 1956, the said Court in its opinion recognized that under the Florida law all administrative remedies must be exhausted before any litigant can petition the Courts for review, and the Court in that opinion said (p. 16):

> "The question in this case is whether Florida law or federal law governs the reviewability of an award made by such a board in interpreting a collective bargaining agreement negotiated under the duty to bargain imposed on air carriers and their employees by the Act. Florida law makes unenforceable any agreement to arbitrate future disputes and thus would strike down the provision in the agreement that awards of the Pilots' System Board of Adjustment shall be final and binding. Appellant urges that it likewise

allows the review of any pure question of law. However tenuous the distinction between so-called 'unmixed' questions of law and those requiring the deciding of a factual issue also, the appellant contends that we have such a pure question of law before us here in the problem of interpreting the collective bargaining agreement.

Without passing on the issue of whether such a rule exists in Florida, it becomes plain upon a moment's reflection that such a system of review would completely sweep aside Congress' efforts to provide for a prompt and orderly settlement of labor disputes by system boards of adjustment. Moreover, such a result would obtain solely as a matter of compliance with Florida's contrary policy of allowing disputants a court review of their disputes, regardless of their agreements to arbitrate those questions with finality. It would rest the effectiveness of the statutory plan upon the variegated characteristics of state law, and eventually lead to the anomaly of a National Air Transport Adjustment Board whose decisions, except in awarding money, *must* be final, existing alongside coordinate system boards in Florida whose decisions cannot be final. Although the parties could achieve what they have here sought, a final decision by a board versed in the problems of the industry, by electing to come under the national board, they would lose thereby whatever advantages there are in operating under a board established by a single carrier and its employees.

We see no reason to force such an election. Congress having required the negotiation of collective bargaining agreements, and the establishment of boards of adjustment to interpret them, we deem it a reasonable corollary thereto that it intended that the scope of review in appeals from these boards should be determined by federal courts, applying federal law. In the light of the declared aims of the Act, we also find it to be the intent of Congress to allow the parties to

> make the awards of such boards final and binding. Therefore, giving normal effect to these words we refuse to review a challenged ruling of law, there being no question raised regarding the jurisdiction of the board or the regularity of its proceeding."

In the dissenting opinion (p. 19), the Judge writing it pointed out that this Court in *Transcontinental & Western Air, Inc.*, v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325, conditioned this rule upon compliance with any existing state policy requiring the exhaustion of administrative remedies and pointed out (p. 24):

> "If the state law demands exhaustion of the administration remedy, the suit, even though Federally permitted, cannot be maintained."

In that dissenting opinion it was pointed out that since Sigfred was required either by the Florida law or by reason of the authoritative decision which Pan American was then not free to question, to pursue his remedy through the System Adjustment Board, it was evident that, in assaying its impact upon his rights, his election was not voluntary.

We are willing to accept the theory of the *Sigfred* decision, although we do not agree with the conclusion of the majority, but in this case the procedure guaranteed to the litigant, the employee, required that he be given specific notice of grounds for discharge that he have a right to a hearing on those specific grounds before the administrative officer, to wit, a junior official; that if he could not adjust the matter with the junior official, then he had a right to a full-scale hearing before the Senior Vice-President in Charge, at which all the testimony would be taken and a complete record made; that if he then felt aggrieved by the decision of the Senior Executive, he had a right to review that proceeding before the System Board, but not to

have a complete trial *de novo* where the employee is to be met by new challenges, new charges and new evidence which was not even submitted in the first two steps of the proceeding.

The System Board was not the initial Board. It was simply a Review Board. It was not a Board or "Court of First Impression".

At the time this matter was submitted to the System Board, there was only one question, and that is whether the Company had the right, in view of the provisions of the Railway Act, to exact a resignation from a pilot of long standing in the Company, not as a condition of his immediate discharge and severance from the Company, but as a condition for his reinstatement.

Such a condition would render the entire theory of the Railway Labor Act a farce. It would be so clearly against public policy that the whole background of the Act would simply become a moot question.

For the Courts to give protection and validity to such an arbitrary power in the System Board would be contrary to every concept of American Judicial Interpretation. To advocate and to uphold that rule would create a virtual state of peonage which is utterly shocking in view of the continual rulings by this Court as to the basic concept of American Justice and American doctrine of due process of law.

The District Court and the Appellate Court assumed certain factual conclusions from the old proceedings which led up to the resignation of July 28, 1950. The mere use or consideration given to that old record was not only misleading, but the Board had no jurisdiction to make those conclusions when there were never any conclusions made by the System Board of Adjustment in 1950.

Briefly summarized, it would appear that a tower operator at the Detroit Airport, an employee of the Civil Aeronautics Authority, filed a complaint that Captain Paul Woolley had come too close to his tower in making a take-off in the winter of 1950. In other words, these were charges made directly by the C.A.A. Based upon that charge by an official of the C.A.A., Captain Woolley was suspended, not discharged, pending an investigation. Apparently the C.A.A. official withdrew his charges. Just what happened to those charges, or why they were withdrawn, certainly does not appear in this record. It is safe to assume that when the C.A.A. investigated the charges made by one of its officials, it must have recalled them or determined they were not well founded, because it did not press the charges.

Whether Captain Woolley was properly represented, or whether he knew the charges had been withdrawn, or whether he had any reason to believe that there was any basis for the charges, is not clear. The record does not show why the C.A.A., which had made the claim or reported the alleged violation in the first place, was willing to withdraw its charges and to permit Captain Woolley to go back to work. His license was not impeded in any way. The C.A.A. had made no request that Captain Woolley be suspended, and there is no showing that it insisted that when the Company put Captain Woolley back to work, he be disciplined in any way. This was not a charge which the Company had made against Captain Woolley, but one which had been made by the C.A.A. to the Company, which in turn acted up to a certain point in the investigation of that charge.

Neither of the Courts reviewing this matter found that a resignation policy, whereby the Company as a condition for the employment exacted a hidden resignation,

was in accord with the Railway Labor Act. The law is very clear that such a proposition when applied to either a Federally created board or a State board or involved in civil service regulations, is utterly void. See *Watkins* v. *City of Seattle*, 99 P. 2d 427, 432; *Poland* v. *Glovers District Court of New York*, 111 F. Supp. 675; *State ex rel. Murtagh* v. *Department of Civil Servic* , 42 So. 2d 65-69; *National Railroad Adjustment Board, First Division, Award No. 5269, Docket No. 9519.*

The District Court and the Court of Appeals in their respective opinions have failed to comment on the legality of such a resignation. We have not been furnished with any citations in any of the opinions which are in conflict with the rules set forth in the above cases.

We are simply confronted with a letter accepting the 1950 resignation written by Mr. S. L. Shannon, Senior Vice-President in Charge of Operations of Eastern Airlines, and he in his first letter simply discharges Captain Woolley by accepting a six year old resignation. That was the only question brought before the Junior Official. There was no hearing before Shannon as required under the second provision of the contract. No testimony was taken, no record made. Shannon, the Vice-President, simply said in his letter of March 2nd, as above mentioned (Opinion, p. 5):

> "* * * my letter to you of February 20, 1956 still stands."

That was the only thing which could have been certified by either party to the System Board of Adjustment under the discipline procedure. That System Board did not find that Captain Woolley was liable for discharge for cause. Either the resignation was legal, or it was contrary to the provisions of the National Railway Labor Act.

Just where that Board injected the doctrine that the resignation was legal if it was not to be exercised or acted upon arbitrarily, we cannot tell. There is nothing in the letter, nothing in the record.

What is "good cause"? "Good cause" might be a set of facts which would satisfy Mr. Shannon but would not constitute specific objections or grounds for discharge under Section 29. Mr. Shannon was a member of the four-man Adjustment Board. He testified as a witness while he was a member of that Board. He had made the original charges vague and indefinite, simply accepting the resignation. The Board throughout the hearing continuously ruled that it was only going to permit testimony to be introduced as might have a bearing upon the right of whether to accept or not accept the resignation. The only issue was a false collateral issue, as to whether Mr. Shannon was acting in good faith when he accepted the resignation. He was the prosecutor, the accuser, a member of the Board which was reviewing his own decision as a Senior Officer. Regardless of what he had in mind, the Board officially ruled that it was not considering any of the evidence from the standpoint of the legality of the discharge or the substance of any charges, unless they had a bearing upon whether the Company was acting in good faith in accepting the six year old resignation.

In the case of *Edwards* v. *Capital Airlines*, 176 F. 2d 755, decision from the United States Court of Appeals, District of Columbia Circuit, it was provided:

> "Provision in contract between air line and union that award of 'System Board of Adjustment' created under the contract to determine disputes, shall be 'final and binding' could not prevent non-union employees from securing judicial review of an adverse award made where board was composed of two representatives of

union, which was opposed to non-members' position, and two representatives of company, which was neutral."

The Court said in defining the type of power or jurisdiction of an Airline Adjustment Board (760):

"This Board is not the Railway Adjustment Board, whose functions and power are fixed by the statute. This is a board created by contract. But the right to create it was reserved to the parties by the original Act, and a duty to create it was imposed, by a later amendment, upon 'every carrier and * * * its employees, acting through their representatives.' This gives it a public character that cannot be ignored.

The statute makes the awards of the National Adjustment Board 'final and binding upon both parties to the dispute'. Nevertheless, the courts have indicated definite views that under some circumstances such awards are subject to judicial examination. This court, speaking through Mr. Justice Rutledge, indicated that thought in Washington Terminal Co. v. Boswell, and the Circuit Court of Appeals for the Third Circuit did so in Dahlberg v. Pittsburgh & L. E. R. R., Steele v. Louisville & N. R. R., dealt with another phase of collective bargaining, the negotiation of a contract, but in the course of its opinion the Supreme Court discussed the grievance procedure and the Adjustment Board. It reflected the idea of a limitation upon the term 'final and binding' and indicated its view that the awards of an Adjustment Board chosen in large part by those against whom the real complaint is made, are not immune from judicial scrutiny. The Court also held in that case and in Tunstall v. Brotherhood that a minority whose interests are not represented by a union, has rights derived from the statute and is without an adequate administrative remedy. In Elgin, J. & E. R. R. v. Burley, the Supreme Court dealt with an award by the Adjustment Board. We need not relate the opinions in that case in detail. The problem there was dif-

ferent from the one here, and so the decision does not control. But the Court made clear its view that Congress did not intend 'to submerge wholly' the minority interests in grievance procedure. It said:

'In the view we take the Act guarantees to the aggrieved employee more than merely the right to be heard by the union and the carrier. * * * All of these provisions contemplate effective participation in the statutory procedures by the aggrieved employee.

* * * the drastic effects in curtailment of his preexisting rights to act in such matters for his own protection would be most obvious in two types of cases: * * * the other, where the interest of an employee not a member of the union and the collective interest, or that of the union itself, are opposed or hostile.'

* * *

Even in a National Adjustment Board proceeding directly under the statute itself, the courts may look at the actualities of a dispute and the adjudication of it and will not be foreclosed by either assumptions or provisions that the collective agent acts in complete protection of the rights of each and every employee."

A similar question was passed upon also by this Court in the case of *Pennsylvania Railroad Company* v. *Rychlik*, 77 S. Ct. 421, 352 U.S. 480, decided February 25, 1957. As we understand the majority opinion, the Supreme Court of the United States held that the courts had the right in certain cases to review a decision of the National Railroad Adjustment Board. After there had been a decision by the Railroad Adjustment Board certain trainmen brought a suit in the United States District Court, Western District of New York, 128 Fed. Supp. 429, and that Court denied the application for an injunction and granted the motion to dismiss the complaint. The United States Court of Appeals (229 F. 2d 171) reversed the judgment and remanded the

cause, and the Brotherhood and the Railroad together brought certiorari to the Supreme Court of the United States.

The Court of Appeals decision was reversed, but apparently on the substance and the merits, and not because the Adjustment Boards had final jurisdiction and the courts had no right to review it.

Mr. Justice Frankfurter, in specially concurring with the balance of the Court, objected to the reasons advanced by the Court, because he determined from various dissenting opinions from which he quoted, that the Courts do not have the right to review the System Board action. In the dissenting opinion (77 S. Ct. 431) it was said:

> "Right or wrong, a court has no jurisdiction to review what the System Board did, unless a complainant asserts arbitrariness and seeks to enforce the limited protection established in the Steele case."

The *Steele* case referred to was *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173.

In that case (Headnote 6) it was said:

> "The purpose of providing by statute for collective bargaining is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group, and the benefits of the statute are open to every employee of the represented unit."

Under this decision, it is respectfully claimed that since Captain Woolley was bound by the contract, neither he nor the Company could make any agreement covering special rights or privileges by either one against the other. It is admitted that there was no provision in the bargaining contract to provide for any special class of employee who could be removed at will or at the whim of the Company

simply by giving a resignation prior to employment. We find no such contention being made by the Union in this case. No such contention has been found in either of the opinions of the Lower Courts, and yet, notwithstanding the absence of any such provision in the contract, we find the Lower Court upholding as a substitute this procedure, which could only have been as the result of an arbitrary attitude of the Court, going far beyond any attempted claim of jurisdiction by the Adjustment Board. The Union in the preliminary stages of this proceeding, through the attorney furnished by the Union to represent Captain Woolley, strongly contended that there was no such provision in the contract; that that power had not been granted to any feature of the discipline action or to the Junior Officer, the Senior Officer or to the System Board of Adjustment; that it would be contrary to the public policy, and that the acceptance of the resignation was a nullity.

However, when the System Board, contrary to the contention made by the Union, arbitrarily took jurisdiction and held that it could approve the acceptance of the resignation if it was in good faith, then the Union shifted sides and vigorously opposed petitioner in the Circuit Court of Appeals. To say that this was merely an inconsistent position would be the under-statement of the year. We think it is obvious that there was a degree of arbitrariness and lack of proper procedure self-evident from that fact alone.

In a case not exactly similar but which had some basic points of similarity, the United States Court of Appeals for the Fifth Circuit, *Moe* v. *Eastern Air Lines, Inc.*, 246 F. 2d 215—June 18, 1957—Opinion by Borah, Rives and Brown, Circuit Judges, which constituted a different division of the same Court which ruled in this case, reiterated that the System Board of Adjustment under the bargaining contract

was final unless there was some other power or duty contained in the conflicting statute known as the Universal Military Training Service Act, 50 U.S.C.A., Appendix 459.

But a study of that case will disclose that the Court was in great doubt about its duties and its jurisdiction under the National Railway Labor Act where an airline pilot was involved.

Just prior thereto, the United States Court of Appeals, Seventh Circuit, in the case of *Ellerd* v. *Southern Pacific Railroad Co.*, 241 F. 2d 541, First Division of the National Railroad Adjustment Board, said this:

> "In absence of any question concerning regularity of proceedings before National Railroad Adjustment Board, for lack of notice or other defect preventing due process of law, federal district court has no right to review order of board; if that body has jurisdiction and proceeds according to constitutional guarantees, its decision is final."

In that case there was a suit filed by an employee of the Southern Pacific Railroad to review and set aside an award of the National Railroad Adjustment Board to restore him to employment and seniority rights. The United States District Court for the Northern District of Illinois, Eastern Division, rendered summary judgment for the defendant, and the plaintiff appealed. The Court of Appeals, through Judge Lindley, Circuit Judge, held (541):

> "* * * if employee had been deprived of due process of law by action of union in unauthorizedly representing employee in employee's claim for reinstatement before National Railroad Adjustment Board, award of board would be subject to judicial review."

That Court (p. 544) reviewed many of the decisions of the Federal Courts, including a review of the case of *Sigfred* v. *Pan American World Airways, Inc.*, 230 F. 2d 213,

5th Circuit, and reached the conclusion with reference to the System Board (544):

> "If that body has jurisdiction and proceeds according to constitutional guarantees, its decision is, in the words of the statute, final."

In that case there was a summary judgment for the defendants, just as there was in this case. In the *Ellerd* case (*supra*) the claim was made that he, Ellerd, was not represented or had not given authority to the Union to represent him in presenting his claim to the Adjustment Board.

The attack made in the *Ellerd* case was that the Adjustment Board had no jurisdiction, and because the Board had acted in an arbitrary and capricious manner. But the Appellate Court reversed the District Court which had dismissed the case on summary judgment, and the case was sent back for further trial to determine whether or not the plaintiff, the employee, had been denied due process of law.

That, in effect, is all we had asked for in this case. We claim that the petitioner has been denied due process of law because the Board did not have any jurisdiction by implication. It had jurisdiction only to construe and determine matters which were within the four walls of the bargaining contract. It had no power to reach out and grab unrelated and collateral matters, and after admittedly refusing to pass upon whether there was any question of discharge for cause under Section 29 of the contract, arbitrarily hold that the mere acceptance of the six year old resignation was the equivalent.

There is one other phase to this case about which we will comment because the Lower Court, as well as the Appellate Court in its opinion, after holding that the Courts

had no jurisdiction to review the decision of the Adjustment Board, then proceeded to search through the half-completed record and do a job and perform a service and exercise a jurisdiction which the Adjustment Board itself had not even purported to entertain, because it held that its review of the record, such as it was, disclosed there had been an equivalent to a trial and a discharge for cause under Section 29 of the contract.

It is difficult for us to conceive how the Lower Court and the Appellate Court, on the one hand, uphold the sacred act of Congress in holding the employee strictly to account, and then on the other hand completely ignore the limitations of the Congressional Act and uphold a decision as a discharge on merit or cause, when the Board, by its own findings and its own actions, ruled that it would not consider that an action for discharge on the merits, and that if it decided to do so, it would only be after further argument and the reopening of the case for further pleadings and testimony.

Therefore, we will not take issue with the merits of the fact findings by the Lower Court and the Appellate Court because clearly that was not within any purview of the issues presented to either of the Courts for solution.

In the case of *Nilva* v. *United States*, 77 S. Ct. 431, 252 U.S. 385, at least four members of this Court in a dissenting opinion have recently said (441-442):

> "Where a trial judge bases his decision in part on evidence which although material is inadmissible the conviction cannot stand even though an appellate court might conclude after expunging the bad evidence that enough good remained to support the conviction. The defendant is entitled to a decision by the trial judge based on that judge's evaluation of the proper evidence. It is no answer to say that the trial judge

could have found the defendant guilty solely on the good evidence. He did not and the defendant is entitled to a retrial. The danger of prejudice from inadmissible hearsay was particularly grave in this case since the admissible evidence before the trial court was so grossly inadequate.

The erroneous admission of portions of the record from the earlier trial accentuated another in propriety in the proceedings below. I believe that it is wrong in a Rule 42 (b) proceeding for the same judge who issued the orders allegedly disobeyed and who preferred the charges of contempt on his own initiative and based on his own knowledge to sit in judgment on the accused. In essence, this allows a man who already believes that another person has disobeyed his command to act as both prosecutor and judge in a proceeding to 'decide' formally whether that person disobeyed him and should be punished. It is contrary to elemental principles of justice to place such power in the hands of any man. * * * Here, besides issuing the orders allegedly disobeyed and then citing petitioner for contempt, the trial judge was intimately involved in earlier proceedings from which the contempt charge developed and in which evidence relevant to that charge was presented. Under such circumstances he would have been super-human not to have held preconceived views as to petitioner's guilt."

When we apply that rule, which seems to relate to substantial justice and common sense, then how could the procedure in this case stand the test of due process, considering the action of the Union, its opposition to the petitioner for whom it was supposed to act, the position of Mr. Shannon as the Vice-President of Eastern Air Lines, sitting both as the Senior Officer, the one who made the charges, a member of the four-man Adjustment Board, and the chief witness for the Board, and who had originally been the instrument by which the old 1950 proceed-

ings against the petitioner had been dismissed, and by whom the reinstatement and re-employment was effectuated through the demanding of an illegal and inoperative resignation. How could there have been a fair trial or due process before the Adjustment Board under these circumstances?

We respectfully urge that the decision of the Lower Court and of the Court of Appeals should be reversed and the cause remanded for further proceedings, and that certiorari be granted.

Respectfully submitted,

WILLIAM GRESHAM WARD,
1240 duPont Building,
Miami 32, Florida,
Attorney for Petitioner,
Paul S. Woolley.

APPENDIX A.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 16585.

PAUL S. WOOLLEY,
Appellant,

vs.

EASTERN AIR LINES, INC., ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(December 5, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and WISDOM, Circuit Judges.

TUTTLE, Circuit Judge: This appeal presents the question whether the District Court has the power to entertain a suit for reinstatement with back salary of an air line pilot who has previously voluntarily submitted his case to the System Board of Adjustment, created under

the authority of the Railway Labor Act, 45 U.S.C.A., §184, and has been denied relief.

Appellant Woolley had been laid off in 1950 by Eastern Air Lines for alleged unsafe flying practices. After considerable negotiations conducted on his behalf by the Air Line Pilots Association, his bargaining representative, the company agreed to take him back after six months suspension on condition that he sign a letter of resignation which could be accepted by Eastern's Vice President of Operations "at any time in the future, should you personally feel that I am not handling my job in the proper manner."[1]

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[1]This letter was in the following form:

"July 28, 1950

"Mr. S. L. Shannon
Vice President—Operations
Eastern Air Lines, Inc.
Miami, Florida

Dear Mr. Shannon:

First let me say that I sincerely appreciate the opportunity that you are giving me to come back on the line as captain.

Naturally, the six months layoff without pay for my improper handling of flight 703 at Detroit on January 29, 1950 has been hard to take. However, I have had plenty of time to think about it during my enforced absence from the line, and I realize that I was wrong in this case and have been wrong in the other cases in the past, where I have been called on the carpet or disciplined by Management. I have made up my mind that I must behave myself if I expect to continue as an employee of Eastern Air Lines.

Therefore, I hereby state that you may consider this letter to be my letter of resignation as an employee of Eastern Air Lines, which you may accept at any time in the future, should you personally feel that I am not handling my job in the proper manner.

I sincerely hope that I will be allowed to continue as an employee with Eastern for many years to come, and I want to assure you that I shall do everything in my power to keep it that way.

Very sincerely yours,

Paul S. Woolley"

On February 20, 1956, Eastern wrote a letter to Woolley purporting to accept the resignation by using the words contained in his letter of July 28, 1950, "I personally do not feel that you have been handling your job in the proper manner."[2] Thereupon Woolley replied by stating that he had been discharged without the benefit of the grievance procedures provided in the collective bargaining

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[2]The letter is quoted in full:

"EASTERN AIR LINES
Incorporated
Member of the National Safety
Council
Miami International Airport
Miami 48, Fla.

February 20, 1956

Captain Paul S. Woolley
Eastern Air Lines, Inc.
Miami, Florida

Dear Captain Woolley:

"In reference to your letter of resignation dated July 28, 1950 please be advised that I personally do not feel that you have been handling your job in the proper manner and therefore your resignation as an employee of Eastern Air Lines, Inc. is hereby accepted to become effective immediately.

"Please contact your Chief Pilot regarding any matters connected with this termination of your employment with the Company.

"Very truly yours,

(Signed) S. L. Shannon
S. L. Shannon
Senior Vice President"

agreement, specifically an investigation and hearing.[3] In response to this Eastern replied that this was the acceptance of a resignation rather than a discharge, but that the writer would talk to Woolley two days later, and then stated that the company's action had been "based in large part on unsafe flying of" a certain flight and Woolley's

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[3]This letter follows:

"February 27, 1956.

800 Palerno Avenue
Coral Gables, Florida

"Mr. S. L. Shannon
Eastern Air Lines, Inc.
Miami International Airport
Miami 48, Florida

Dear Mr. Shannon:

"Receipt of your letter of February 20, dismissing me as a pilot for Eastern Air Lines, Inc., is acknowledged.

"Under the agreement between Eastern Air Lines, Inc., and the air line pilots in the service of Eastern Air Lines, Inc., as represented by the Air Line Pilots Association, International, Section 29, sub-section A. Paragraph numbered 1, it is provided that a pilot shall not be disciplined or dismissed from the Company without notification in writing as to any such action, and shall not be dismissed or disciplined without an investigation and hearing, provided the pilot makes a written request for an investigation and hearing within seven days after receiving such notification. Contrary to that provision, I have been dismissed without an investigation and hearing.

"I hereby make written request for an investigation and hearing as provided in the Section referred to. Will you be kind enough to advise me of the date for the investigation and hearing.

"With kind regards, I am

Very truly yours,

PAUL S. WOOLLEY,

800 Palerno Avenue
Coral Gables, Florida"

"handling of another flight."[4] Wooley went to the office of the vice president Shannon and there discussed everything he cared to discuss with him about the matter. He made no request for any other or further hearing or investigation and he did not ask for any further specification of

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[4]This letter follows:

"Eastern Air Lines
Miami International Airport
Miami 48, Florida

February 27, 1956.

"Registered Mail
Return Receipt Requested
"Mr. Paul S. Woolley
800 Palerno Avenue
Coral Gables, Florida

"Dear Mr. Woolley:

"This will acknowledge your letter of February 27, 1956. My letter to you dated February 20, 1956 was simply an acceptance of your resignation. Consequently I do not think Section 29 of the Agreement between Eastern Air Lines and the Air Lines Pilots Association is applicable. However, if you wish to discuss the matter with me I will be glad to talk with you on Wednesday, February 29, 1956, at 10:00 a.m. in my office.

"For your information, my action in accepting your resignation was based in large part on the unsafe flying of Flight 644 of February 5, 1956 enroute into Boston, and your handling of Flight 647 of February 6, 1956 enroute into Miami. Your conduct in handling those flights confirms other information which has come to my attention from time to time.

"Very truly yours,

(S) S. L. SHANNON,
(S. L. Shannon),
Senior Vice President."

charges. On March 2nd he received a further letter from Shannon,[5] adhering to the original action.

Thereafter Wooley asked the Air Line Pilots Association to take the matter to the System Board of Adjustments, which was done. A full hearing was had before the Board, which resulted in a decision favorable to the air line.[6]

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[5]This letter follows:

"Eastern Air Lines
Miami International Airport
Miami 48, Florida

March 2, 1956.

"Captain Paul S. Woolley
800 Palerno Avenue
Coral Gables, Florida

"Dear Captain Woolley:

"This is to confirm what I told you February 29th in my office when you came in to discuss your case.

"I am not changing my decision, and my letter to you of February 20, 1956 still stands.

"Very truly yours,

(S) S. L. SHANNON
(S. L. Shannon),
Senior Vice President.

"SLS:eh
Registered Mail
Return Receipt Requested."

[6]The Board's order follows:

"BEFORE THE
EASTERN AIR LINES PILOTS SYSTEM
BOARD OF ADJUSTMENT
In the Matter of the Grievance of:
Paul S. Woolley

DECISION OF THE BOARD OF ADJUSTMENT

"The Grievant herein contends that his employment as an airline captain with the Company was wrongfully terminated in that his purported letter of resignation, dated July 28, 1950 and accepted by the Company February 27, 1956, was not intended to have effect as such and that there

Woolley thereafter filed this suit joining the Eastern Air Lines, the Air Lines Pilots Association, International, and the individual members of the Board of Adjustment, as defendant. In it he sought a declaratory judgment determining his rights and a mandatory injunction requiring the Board of Adjustment to "cancel and discharge" their adverse order and requiring the air line defendant to reinstate him with back pay and benefits "unless and until the said Eastern Air Lines, Inc., shall have filed an appropriate order of discharge for cause, and the defendant Eastern Air Lines Pilot System Board of Adjustment has

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was not sufficient cause or ground for his involuntary dismissal.

"The Board finds: 1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association International, on the one hand and the Company on the other hand;

"2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

"3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

"4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

"Decision of the Board: Grievance denied.

"Signed at Miami, Florida, August 1, 1956.

"S. L. Shannon
Co. Member, S. L. Shannon

"R. W. Rivenbark
Chairman, R. W. Rivenbark
R. M. Tedlock
Pilot Member, R. M. Tedlock
George A. Smith
Co. Member, G. A. Smith."

had a complete and adequate hearing within the confines of its jurisdiction and either granted or denied the grievance complained of, if any, for cause."

It will be seen from the prayers of the complaint that its purpose was to review and have set aside the decision of the System Board of Adjustment. The first question that must be resolved, therefore, is posed by the contention of the appellees that in the circumstances here outlined the courts are in effect ousted of jurisdiction. If this contention is correct we need proceed no further in an effort to appraise the correctness of the Adjustment Board's decision.

The Supreme Court has not directly passed on the question here posed. The statute authorizes the creation by air lines of system boards of adjustment to aid in the stated policy of avoiding any interruption to commerce and providing for the prompt and orderly settlement of labor disputes, including those arising out of the interpretation or application of collective bargaining agreements, 45 U.S.C.A. §151(a).[7] Reference to the various provisions of the Railway Labor Act makes clear that such system boards are given the authority to make final binding decisions touching on the application and construction of collective bargaining agreements, especially if the bargaining agreement expressly includes the right of appeal to such a board and if the articles between the air line and the bargaining agent setting up the system board expressly state, as does that of Eastern Air Lines Pilots System Board of Adjustment, that "decisions of the Board in all

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[7]For a statement of the statutory authorization for the creation and statement of the powers of the "system board of adjustment," including the interrelation of the board with the National Mediation Board, see Sigfred v. Pan American World Airways, (5 Cir.) 230 F. 2d 13 at page 16.

cases properly referable to it shall be final and binding upon the parties thereto."

It is to be borne in mind that no air line pilot is required by the collective bargaining agreement or by the law to take his dispute to the system board of adjustment. The two Supreme Court decisions in *Slocum* v. *Delaware L. & W. R. R.*, 339 U.S. 239, and *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630, make clear the election that is available to the employe. If he determines that he will treat his grievance as involving a determination of rights as an employe under the bargaining agreement and asserts his rights to be retained as an employe he must go to the board for redress. If he accepts the action of the carrier as a final discharge he may sue in court for a breach of the contract of employment. He may not do both.

In light of the fact that any recourse had to the board is the result of voluntary choice, we did not hesitate in the Sigfred case to hold:

> "In the light of the declared aims of the Act, we also find it to be the intent of Congress to allow the parties to make the awards of such boards final and binding. Therefore, giving normal effect to these words, we refuse to review a challenged ruling of law, there being no question raised regarding the jurisdiction of the board or the regularity of its proceeding. James Richardson & Son v. W. E. Hedger Transportation Corp., 2 Cir. 98 F. 2d 55." *Sigfred* v. *Pan American World Airways*, (5 Cir.) 230 F. 2d 13, 17.

This Court has held to the same effect in *Majors* v. *Thompson*, (5 Cir.) 235 F. 2d 449, where at page 451 we said:

> "Where the employee has voluntarily applied to the Board for reinstatement an election of remedies has been made which bars the right to litigate before

the courts a claim of damages for wrongful discharge. Michel v. Louisville & N. R. Co., 5 Cir., 1951, 188 F. 2d 224. See also Sigfred v. Pan American World Airways, 5 Cir., 1956, 230 F. 2d 13, certiorari denied 76 S.Ct. 782; Coats v. St. Louis-San Francisco R. Co., 5 Cir., 1956, 230 F. 2d 798."

There can be no doubt here that the board had jurisdiction of the dispute, at least as to any challenge by appellant because he invoked its jurisdiction. It cannot therefore be questioned that, in the language of the articles establishing this particular System Board of Adjustment the case was "properly referable to it."

We hold therefore that the rule of stare decisis requires that we adhere to the Sigfred and Majors opinions and hold that the complaint did not state a claim against defendants upon which relief could be granted.

As has been heretofore said, the Supreme Court has not held, as has this Court in the several cited cases, that, granted jurisdiction in the Board, its decisions on either factual or legal or mixed issues, are not reviewable in court. We therefore deem it appropriate to discuss briefly the other issues raised on the appeal.

Appellant contends that the trial court erred in entering a summary judgment on the theory that the issue as to the correctness of appellant's dismissal had been clearly presented to the Board and that the Board's finding that the air line acted "for good and sufficient reasons and . . . not arbitrarily or capriciously" deprived it of "authority to set aside the Board's decision."

It is not necessary, in the view we take of the case, to determine whether the proceedings in the trial court partook of the nature of a review of the Board's action

or of a trial de novo.[8] All parties proceeded in the trial

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[8]Under our initial determination that the suit could not be maintained, we would of course not reach this question.

court on motions for summary judgment on the assumption that the trial court had the power to enter final judgment on the record of the proceedings before the Board. The Board construed the letter of resignation of July 28, 1950, as permitting the air line to accept it "for good and sufficient reasons but not arbitrarily or capriciously." It heard extensive testimony and considered documentary evidence which fully warranted the Board's decision that the air line had good and sufficient reason for accepting the resignation. The record would warrant a finding that Woolley repeatedly, knowingly and intentionally disregarded company rules for the protection of the safety of its passengers and that he showed a callous attitude towards these rules and regulations. The Board accepted some of this testimony, as it said, only as bearing on the sufficiency of reasons for accepting the resignation and not to be considered as being sufficient basis for grounds of discharge, if the Board held the resignation ineffective. As we have said, the Board held the evidence constituted "good and sufficient reason" to accept the resignation.

The trial court equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge, and without expressly deciding whether the action of the defendant air line was an authorized acceptance of an outstanding resignation or a discharge for cause, stated that

> "The issue being thus clearly presented to the Board and the Board having decided that the Defendant Eastern Air Lines acted 'for good and sufficient

reasons and that the Company did not act arbitrarily or capriciously', this Court does not have any authority to set aside that Board's decision."

We think this decision was correct. It is clear that if the action of Eastern is to be construed as a discharge then there was sufficient competent evidence of unsafe flying on the two specific flights #644 and 647 to support not only a finding of sufficient reason for accepting the resignation but also to support a finding of adequate grounds for discharge. All of the testimony of co-pilot Hughes, together with his written report and the verifying records of communications were introduced and received free of any objection that they were not relevant for all purposes. They made out a case of dangerous and unsafe approach to the Boston airport on flight 644 and a wilful flight through a danger area at Patrick Air Force Base in the face of specific warning to stay clear on flight 647. The latter act was accompanied by credible evidence of an attempt by Woolley to misstate the time when reporting from Vero Beach.

There is no merit in the contention that the issue of the validity of his discharge (if it is to be so considered) was not before the Board. Although the letter of February 20th notifying Woolley that his resignation was accepted did not specify the "precise charge against him," the letter of February 27th did do so, and it also provided an opportunity for a hearing, as contemplated in section 29 of the contract of employment. At least Woolley did not make any request for more specific statement or additional hearing. When he thereafter appealed his case to the Board, he waived any procedural defect such as the right to further specific charges or additional hearing and the Board was justified in making its decision, so long as it had ample basis for deciding the case on the evidence adduced

as to the two charges that were actually made. The evidence here was amply sufficient.

Finding as we do that the Board of Adjustment had full jurisdiction invoked by appellant himself, and that there is no contention that the Board was not properly constituted or that there were other circumstances that would permit a collateral attack, the decision of the Board was final and binding and may not be reviewed. Further, should this view formerly expressed by this Court be untenable, nevertheless we find that on the record here the finding of the trial court that the decision of the Board was fully supported and thus was not reviewable on the merits is right.

The judgment will be AFFIRMED.

APPENDIX B.

Judgment.

Extract from the Minutes of December 5, 1957.

No. 16585.

PAUL S. WOOLLEY

vs.

EASTERN AIR LINES, INC., ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Paul S. Woolley, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 822

PAUL S. WOOLLEY, *Petitioner,*

—v.—

EASTERN AIR LINES, INC., *et al., Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS EASTERN AIR LINES, INC., S. L. SHANNON AND GEORGE A. SMITH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
Statement of the Case	1
Statutes Involved	6
Argument	8
I. There is no basis for review on certiorari	8
II. Woolley was given a full and fair hearing after adequate notice of specific charges against him	9
III. Woolley's action in voluntarily submitting the case to the Adjustment Board constituted an irrevocable election of the Adjustment Board remedy which precludes court action	10
IV. Woolley's resignation and the acceptance thereof were valid and effective, and the Adjustment Board properly upheld the acceptance of the resignation	20
Conclusion	25
Position of Other Respondents	26

TABLE OF CASES

PAGE

Alabaugh v. Baltimore & Ohio R.R., 222 F. 2d 861 (4th Cir. 1955) 23

Barnett v. Pennsylvania-Reading Seashore Lines, 245 F. 2d 579 (3d Cir. 1957) 12

Berryman v. Pullman Co., 48 F. Supp. 542 (W. D. Mo. 1942) 16

Bower v. Eastern Air Lines, Inc., 214 F. 2d 623 (3d Cir. 1954), *cert. denied*, 348 U. S. 871 (1954) 12, 15, 19

Broady v. Illinois C. R.R., 191 F. 2d 73 (7th Cir. 1951) 12

Broome v. Louisville & N. R.R., 250 S. W. 2d 93 (Tenn. 1952) 12

Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad, 353 U. S. 30 (1957) 17

Buster v. Chicago, M. & St. P. & P. R. Co., 195 F. 2d 73 (7th Cir. 1952) 12

Butler v. Thompson, 192 F. 2d 831 (8th Cir. 1951) 12

Coats v. St. Louis-San Francisco Railway, 230 F. 2d 798 (5th Cir. 1956) 12

DePriest v. Pennsylvania R.R., 31 Labor Cases 70,238 (D. N. J. September 19, 1956) 12

Edwards v. Capital Airlines, Inc., 176 F. 2d 755 (D. C. Cir. 1949) 8, 19

Elgin, J. & E. Ry. v. Burley, 325 U. S. 711 (1945) 16

Ford Motor Co. v. Huffman, 345 U. S. 330 (1953) 23

General Committee v. Missouri-Kansas-Texas R.R., 320 U. S. 323 (1943) 17

General Committee v. Southern Pacific Co., 320 U. S. 338 (1943) 17

PAGE

Hargis v. Wabash R.R., 163 F. 2d 608 (7th Cir. 1947) 16
Hartley v. Pan American Airways, Inc., 98 F. Supp. 247 (N. D. Cal. 1951) 16
Hecox v. Pullman Co., 85 F. Supp. 34 (W. D. Wash. 1949) 16
Hettenbaugh v. Air Line Pilots Association, 189 F. 2d 319 (5th Cir. 1951) 21

Illinois C. R.R. v. Brotherhood of Railway Trainmen, 83 F. Supp. 930 (N. D. Ill. of 1949) 12

Keel v. Illinois Terminal R.R., 346 Ill. App. 169, 104 N. E. 2d 659 (1952) 19
Kelly v. Nashville, C. & St. L. Ry., 15 Labor Cases 64,746 (E. D. Tenn. 1948) 18
Kelly v. Nashville C. & St. L. Ry., 75 F. Supp. 737 (E. D. Tenn. 1948) 16
Kendall v. Pennsylvania R.R., 94 F. Supp. 875 (N. D. Ohio 1950) 12

Majors v. Thompson, 235 F. 2d 449 (5th Cir. 1956) 12
Mayfield v. Thompson, 262 S. W. 2d 157 (Kansas City Ct. of App., Oct. 5, 1953) 19
Michel v. Louisville & N. R.R., 188 F. 2d 224 (5th Cir. 1951) 10, 13
Moore v. Illinois Central Railroad, 312 U. S. 630 (1941) 10
Morelle v. New York Central R.R., 19 Labor Cases 66,215 (N. D. Ohio 1951) 12

Newman v. Baltimore & O. R.R., 191 F. 2d 560 (3d Cir. 1951) 12

Order of Railway Conductors v. Pitney, 326 U. S. 561 (1946) 17

PAGE

Order of Railway Conductors v. Southern Ry., 339 U. S. 255 (1950) 17

Pellicer v. Brotherhood of Railway Clerks, 118 F. Supp. 254 (S. D. Fla., 1953), *affirmed*, 217 F. 2d 205 (5th Cir. 1954) 23

Pennsylvania Railroad Company v. Rychlik, 352 U. S. 480 (1957) 19

Pigott v. Detroit, T. & I. R.R., 116 F. Supp. 949 (E. D. Mich. 1953) 12

Ramsey v. Chesapeake & O. R.R., 75 F. Supp. 740 (N. D. Ohio, 1948) 16

Reynolds v. Denver & R. G. W. R.R., 174 F. 2d 673 (10th Cir. 1949) 16

Richardson v. Ozark Airlines, Inc., 26 Labor Cases 68,571 (Mo. 1954) 12

Ringle v. Transcontinental & Western Air, 113 F. Supp. 897 (W. D. Mo. July 27, 1953) 19

Rychlik v. Pennsylvania Railroad, 229 F. 2d 171 (2d Cir. 1956) 8, 19

Sigfred v. Pan American World Airways, 230 F. 2d 13 (5th Cir. 1956), *cert. denied*, 351 U. S. 925 (1956) 15

Slocum v. Delaware L. & W. R.R., 339 U. S. 239 (1950) 11, 17

Switchmen's Union v. National Mediation Board, 320 U. S. 297 (1943) 17

Switchmen's Union v. Ogden Union Ry. and Depot Co., 209 F. 2d 419 (10th Cir. 1954) 12

Transcontinental & Western Air v. Koppal, 345 U. S. 653 (1953) 19

Van Zandt v. Railway Express Agency, 99 F. Supp. 520 (S. D. N. Y. 1950) 12

PAGE

Virginian Railway v. System Federation No. 40, 300 U. S. 515 (1937) 23

Walters v. Chicago & N. W. Ry., 216 F. 2d 332 (7th Cir. 1954) 12

Warmack v. Loftin, 19 Labor Cases 66,159 (S. D. Fla. 1951) 16

Washington Terminal Co. v. Boswell, 124 F. 2d 235 (App. D. C. 1941), *affirmed*, 319 U. S. 732 (1943) 17

Williams v. Atchison, T. & S. F. Ry., 204 S. W. 2d 693 (Mo. 1947) 16

Wilson v. St. Louis-S. F. Ry., 247 S. W. 2d 644 (Mo. 1952) 19

Woolley v. Eastern Air Lines, Inc., 250 F. 2d 86 (5th Cir. Dec. 5, 1957) 5, 9

TABLE OF AUTHORITIES

Railway Labor Act, 45 U. S. C. 153, 184 .....5, 6, 7, 18, 21

IN THE

Supreme Court of the United States

October Term, 1957

No. 822

PAUL S. WOOLLEY,

Petitioner,

—v.—

EASTERN AIR LINES, INC., ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS EASTERN AIR LINES, INC., S. L. SHANNON AND GEORGE A. SMITH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement of the Case

The petition for writ of certiorari contains a statement of facts which is, in many respects, confusing and misleading, and which is mixed with argument to such a degree that a brief restatement of the facts and issues appears essential.

Woolley was employed by Eastern as a pilot for a number of years prior to February 20, 1956 (R. 9).

In 1950 Woolley was discharged by Eastern for alleged "unsafe flying practices" (R. 355-356). At the instance of Woolley's bargaining representative—the Air Line Pilots

Association (ALPA)—Eastern finally was persuaded to reinstate Woolley (reducing the disciplinary action to six months lay-off), but only on condition that he sign a letter of resignation which could be accepted by Eastern's Vice President—Operations "at any time in the future, should you personally feel that I am not handling my job in the proper manner" (R. 86, R. 6-8, R. 117-122, R. 139-143, R. 173-178).

On February 20, 1956, Eastern's Senior Vice President—Operations accepted Woolley's resignation (R. 87). Such acceptance was based on Woolley's "unsafe flying" of two flights operated February 5 and February 6, 1956, which conduct "confirms other information which has come to my attention from time to time" (R. 368).

Woolley requested and received a hearing (R. 367, 368) following which the Company's decision to accept the resignation was reaffirmed (R. 369). Woolley then appealed to the Eastern Air Lines Pilots System Board of Adjustment, specifically requesting the Board to hold "that his severance from the Company as a pilot employee on February 20, 1956, for the reasons assigned in the letter of S. L. Shannon, Senior Vice President (Exhibit 1 attached) was improper and wrongful," and requesting that "the Company be required to forthwith reinstate him as a pilot employee without loss of seniority or other conditions of employment" and that "he be reimbursed all monetary losses by him sustained because of the improper and wrongful action of the Company in the premises" (R. 363-365).

In his appeal to the Adjustment Board, Woolley alleged in effect that the Board had jurisdiction and that the dispute was "properly submitted to it," and he stated the "question at issue" to be as follows: "Did the Company properly sever the employment of Paul S. Woolley, a pilot employee, on February 20, 1956?" (R. 363).

The Adjustment Board held a hearing pursuant to Woolley's request (R. 99 *ff.*). At the hearing, Woolley's counsel stated in part as follows (R. 101):

> "First of all, we have the issue, as I understand the problem, of whether or not Mr. Woolley has, in fact, resigned his position with the Company, and the Association and Mr. Woolley take the position that he has not resigned. The basis for my statement is that notwithstanding the fact that in 1950, Mr. Woolley signed a document which purports to be a resignation to be accepted sometime in the future upon an eventuality that this document is of no legal import because it circumvents the Employment Agreement."

Woolley's counsel then argued at considerable length that the resignation should be held to be illegal and of no effect and that "this letter of resignation and its acceptance . . . is nothing more or less than a discharge of Mr. Woolley for whatever reason the Company had at the time, and that he is entitled to an investigation and hearing upon those grounds" (R. 102).

In addition to contesting the validity of the resignation, Woolley contended that Eastern had insufficient cause for discharging him. Eastern, on the other hand, contended that the resignation was valid and properly accepted and, in the alternative, that Eastern had adequate cause to discharge Woolley (R. 104).

The hearing continued for two days, and the transcript of the evidence taken at that hearing required over 200 printed pages (R. 99-339), there having been at least ten witnesses testifying in the proceeding.

The Adjustment Board—consisting of two representatives of Eastern and two representatives of the pilots in Eastern's employ—*unanimously* upheld Eastern's action, stating in part as follows (R. 88-89):

"The Board finds: 1. That the letter of resignation was given by the Grievant as part of a settlement of a previous grievance wherein he was contesting his dismissal by the Company, such settlement being negotiated by the Grievant and his representatives, officials of the Air Line Pilots Association International, on the one hand and the Company on the other hand;

"2. That the letter of resignation was given by the Grievant in good faith and was intended by all involved in the settlement to be effective and to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously;

"3. That Grievant's resignation was accepted by the Company for good and sufficient reasons and that the Company did not act arbitrarily or capriciously in accepting Grievant's resignation; and

"4. That the Grievant's letter of resignation, having been properly accepted by the Company, terminated Grievant's employment with the Company.

"Decision of the Board: Grievance denied."

Woolley brought action in the District Court seeking, in effect, (a) a declaration by that Court as to the same issues which had been submitted to the Adjustment Board; (b) an order requiring the Adjustment Board to "cancel and discharge their order of August 1, 1956 as being entered erroneously and without jurisdiction and without probable cause"; and (c) an order of the Court directed to Eastern requiring it "to reinstate plaintiff to his full rights of seniority and other benefits provided under the contract" (R. 12-13).

After the named defendants in the action filed answers to the complaint, all parties to the action then filed in the District Court motions for summary judgment based upon the verified pleadings of record in the case (R. 341, R. 370, R. 372). Thereafter, the District Court, being of the opin-

ion that there was no genuine issue as to any material fact, entered summary judgment in favor of the defendants (R. 380), and denied the motion for summary judgment of plaintiff (R. 380, 384), upon the ground that the Court lacked authority to set aside the Board order.

The Court of Appeals for the Fifth Circuit affirmed. *Woolley* v. *Eastern Air Lines, Inc.*, 250 F. 2d 86 (Dec. 5, 1957).

Both the District Court and the Court of Appeals held, in effect, that Woolley had voluntarily invoked the jurisdiction of the Adjustment Board and was therefore bound by its decision in view of the contractual requirement (R. 83) and the provision of the Railway Labor Act (Section 3 First (m); 45 U. S. C. 153 First (m)) that decisions of the Adjustment Board shall be "final and binding". Both Courts found it unnecessary to rule whether the resignation and acceptance thereof were, standing alone, an effective termination of the employment, as both Courts "equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge" (250 F. 2d 91), and held the decision of the Board to be conclusive.

The Court of Appeals went further and concluded that "there was sufficient competent evidence of unsafe flying on the two specific flights #644 and 647 to support not only a finding of sufficient reason for accepting the resignation, but also to support a finding of adequate grounds for discharge" (250 F. 2d 91-92).

Statutes Involved

The petition for certiorari does not set out the applicable statutory provisions as required by this Court's Rule 23. The following provisions of the Railway Labor Act are pertinent:

"Sec. 204 [Added by 49 Stat. 1189, 45 U. S. C. 184] The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

"It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act."

"Sec. 3 First [44 Stat. 578, as amended by 48 Stat. 1189, 45 U. S. C. 153]

* * * * *

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case

a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

* * * * *

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board."

ARGUMENT

I.

There is no basis for review on certiorari.

The Petitioner's claimed bases for certiorari are obviously unsupported:

(1) He asserts (Petition, p. 2) a "conflict" between the Court of Appeals decision and "the decision of the United States Court of Appeals for the District of Columbia Circuit and United States Court of Appeals, 2nd Circuit." However, as will be demonstrated hereinafter, the only decisions cited (*Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 755 (D. C. Cir. 1949) and *Rychlik* v. *Pennsylvania Railroad*, 229 F. 2d 171 (2d Cir. 1956)) are plainly inapplicable to a case such as this, where no claim has ever been made that the Adjustment Board was improperly constituted to give Woolley a fair hearing.

(2) Petitioner further asserts (Petition, p. 2) that the lower court "has decided an important question of Federal law which has not been but should be settled by this Court." Actually, the lower court decided this case on two grounds, one of which involves no question of Federal law—*i.e.*, that the decision of the Adjustment Board, if reviewable, was plainly right. The other ground of the Court of Appeals decision was that when an employee voluntarily invokes the jurisdiction of a properly constituted Adjustment Board under the Railway Labor Act to determine his employment status, the adverse decision of that Board is final and binding on him. On this issue, as will be shown hereinafter, the decisions of lower courts are numerous and *unanimous*, and are based on principles established by this Court. Hence, there is no need for this Court to "settle" the issue.

(3) Petitioner says (Petition, p. 2) that the Court of Appeals decision is in "conflict with the applicable decisions

of this Court". However, he notes no such conflict, and there is none.

(4) Petitioner's claim (Petition, p. 2) that the lower courts have "departed from the accepted and usual course of judicial proceedings" is wholly unsupported and unsupportable.

II.

Woolley was given a full and fair hearing after adequate notice of specific charges against him.

The petition for certiorari repeatedly states or implies that Woolley was handicapped in presenting his case to the Adjustment Board because he was not given "specific charges" (Petition, pp. 7-8, 10, 17, 20, 23); and suggests that he was not given a full and fair hearing. The Court of Appeals noted this suggestion (250 F. 2d 92) and held that Woolley was given adequate notice and hearing, and, furthermore, that he "waived any procedural defect" by appealing to the Board and proceeding without objection.

The record in this case shows: Woolley was served with specific charges for his dismissal, the same being unsafe flying of particular flights on specified dates (R. 368); Woolley requested a hearing, and in fact did receive a hearing before the Senior Vice President (R. 367, 368, 369, 123-126), and even made an extraordinary appeal to the Chairman of the Board of Eastern (R. 125-126). After those hearings and investigations upon the administrative level, Woolley then appealed to the Adjustment Board, submitting to that Board the question of whether or not the termination of his employment was proper (R. 363). The Board took extensive evidence, not only upon the circumstances leading to the submission of the letter of resignation, but also upon the circumstances leading to the accept-

ance by the Company of that letter of resignation. Many pages of evidence in the case related solely to the proof of the specific charges of unsafe flying served upon Woolley at the time of his dismissal (R. 99 *ff.*). These facts alone, as shown by the record, dispose of Woolley's argument in support of his specifications of error relating to the jurisdiction of the District Court to review and set aside the decision of the Adjustment Board, inasmuch as Woolley relies solely upon erroneous assumptions of fact to support his position.

III.

Woolley's action in voluntarily submitting the case to the Adjustment Board constituted an irrevocable election of the Adjustment Board remedy which precludes court action.

Woolley had two entirely inconsistent alternative courses of action which he could have followed upon being separated from his employment: (1) he could have regarded the separation as final and proceeded to court action for damages based on alleged "wrongful discharge" (*Moore* v. *Illinois Central Railroad*, 312 U. S. 630 (1941); *Michel* v. *Louisville & N. R. R.*, 188 F. 2d 224 (5th Cir. 1951), and other cases cited herein); or (2) he could claim a continuing employment relationship, demanding hearing before the Adjustment Board and seeking reinstatement with back wages.

These alternatives are mutually exclusive, not only because the first assumes that the employment relationship is at an end while the second assumes that it is continuing, but also because they *must* be pursued before different tribunals. It is obvious that the Company officers and the Adjustment Board could not and would not award damages if the plaintiff accepted his separation as final, for their

jurisdiction is over employees, not strangers. And the courts have universally held that they have no jurisdiction over the second alternative—reinstatement—since the Adjustment Board is created pursuant to act of Congress (the Railway Labor Act) for precisely the purpose of settling such matters and the courts will not interfere with the interpretation and administration of a collective bargaining contract where a continuing employment relationship is contemplated.

The essential distinction between the two alternatives is indicated by the following language from the Supreme Court's decision in *Slocum* v. *Delaware L. & W. R. R.*, 339 U. S. 239, 244-245 (1950):

> "Our holding here is not inconsistent with our holding in Moore v. Illinois Central R. Co., 312 U. S. 630, 61 S. Ct. 754, 85 L. Ed. 1089. Moore was discharged by the railway. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations betwen the railroad and its other employees. If a court in handling such a case must consider some provision of a collective bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board.
>
> "We hold that the jurisdiction of the Board to adjust grievances and disputes of the type here involved is exclusive. The holding of the Moore case does not conflict with this decision, and no contrary inference should be drawn from any language in the Moore opinion."

The following are some of the additional authorities which hold specifically that actions for reinstatement (and, in some cases, even actions for back wages when combined with an action for reinstatement), and similar actions contemplating a continuing employment relationship, will not under any circumstances be entertained by the courts:

Majors v. *Thompson*, 235 F. 2d 449 (5th Cir. 1956);
Coats v. *St. Louis-San Francisco Railway*, 230 F. 2d 798 (5th Cir. 1956);
Bower v. *Eastern Air Lines*, 214 F. 2d 623 (3rd Cir. 1954), *cert. denied*, 348 U. S. 871 (1954);
Walters v. *Chicago & N. W. Ry.*, 216 F. 2d 332 (7th Cir. 1954);
Newman v. *Baltimore & O. R. R.*, 191 F. 2d 560 (3d Cir. 1951);
Broady v. *Illinois C. R. R.*, 191 F. 2d 73 (7th Cir. 1951);
Butler v. *Thompson*, 192 F. 2d 831 (8th Cir. 1951);
Van Zandt v. *Railway Express Agency*, 99 F. Supp. 520 (S. D. N. Y. 1950);
Kendall v. *Pennsylvania R. R.*, 94 F. Supp. 875 (N. D. Ohio 1950);
Illinois C. R. R. v. *Brotherhood of Railway Trainmen*, 83 F. Supp. 930 (N. D. Ill. 1949);
Morelle v. *New York Central R. R.*, 19 Labor Cases 66,215 (N. D. Ohio 1951);
Buster v. *Chicago, M. & St. P. & P. R. Co.*, 195 F. 2d 73 (7th Cir. 1952);
Broome v. *Louisville & N. R. R.*, 250 S. W. 2d 93 (Tenn. 1952);
Switchmen's Union v. *Ogden Union Ry. and Depot Co.*, 209 F. 2d 419 (10th Cir. 1954);
Richardson v. *Ozark Airlines, Inc.*, 26 Labor Cases 68,571 (Mo. 1954);
Pigott v. *Detroit, T. & I. R. R.*, 116 F. Supp. 949 (E. D. Mich. 1953);
DePriest v. *Pennsylvania R. R.*, 31 Labor Cases 70,238 (D. N. J. September 19, 1956), where it was held that the Adjustment Board has exclu-

> sive jurisdiction of the interpretation of a collective agreement which might affect future relations with other employees, even though the employee involved in the particular litigation had retired; and
>
> *Barnett* v. *Pennsylvania-Reading Seashore Lines*, 245 F. 2d 579 (3d Cir. 1957).

Since the reinstatement route (appeal to the Adjustment Board) and the damages route (action in court for damages) are inconsistent and require resort to different tribunals, the courts have uniformly held that election of one route precludes subsequent resort to the other where the decision is unfavorable to the employee.

A full discussion of the principles involved and of various authorities holding that submission of a claim to the Adjustment Board constitutes a binding election of remedies is presented in *Michel* v. *Louisville & N. R. R.*, *supra*. The *Michel* case involved the claim of a former employee that he had been wrongfully discharged and his suit for reinstatement with back wages from the time of discharge to the time of reinstatement. The employee claimed that the carrier had not complied with the contractual requirements as to notice and other procedures prior to discharge. Before bringing suit, the employee had processed his claim through the entire contractual grievance procedure and had pressed it to decision by the National Railroad Adjustment Board, which had upheld the action of the carrier in discharging him. Thus, the case is entirely parallel to the instant case, and the following language of the Circuit Court of Appeals is deemed to be applicable to this case (188 F. 2d 226-227):

> "There is, however, no requirement that an employee so prosecute his claim for relief for breach of an employment agreement before the Adjustment Board. He may proceed in the first instance by suit in the

Courts to recover damages for breach of the contract. Moore v. Illinois Central R. Co., 312 U. S. 630, 61 S. Ct. 754, 85 L. Ed. 1089, and as further discussed in Slocum v. Delaware, L. & W. R. Co., supra. However, when there is a voluntary election to proceed in the manner provided by the Railway Labor Act, 45 U. S. C. A. §151 et seq., supra, and the claim pursued to a determination of the merits by the Adjustment Board, this procedure by both right and reason represents an election of remedies which bars the independent suit which was otherwise available to the claimant. This construction finds strong support in the statute, especially the provision that 'the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award * * *.' In any event, it can not be questioned that by the Act, Congress has established a forum for the settlement of such disputes to which the employee may resort if he so desires. Consequently, there would appear no reason for not enforcing in such instances the fundamental principle that where one of two inconsistent remedies are available, the election of one precludes recourse to the other. This has been the uniform holdings, correctly we think, of the Courts which have considered this question. It follows therefore that in the present case, it appearing from the uncontradicted facts that the question of whether the discharge of the appellant, Michel, was justified, on the one hand, or constituted a violation of the employment agreement on the other, has, in proceedings in effect instituted and prosecuted by appellant, been determined adversely to his contentions, he is therefore not legally entitled to maintain the present suit upon the same claim.

"It is asserted, however, that if the provisions of the statute and the award of the Adjustment Board be given the effect just indicated, then the statute is unconstitutional as evidencing a delegation of judicial power to the Adjustment Board. As we have seen, the statute provides the manner or system of procedure, as well as the finality of the result. This case presents the reverse of the question determined in Washington

Terminal Company v. Boswell, supra, and New Orleans Public Belt Railroad Comm. v. Ward, 5 Cir., 182 F. 2d 654, in that here the 'finality' is operative against the employee, but this, as shown, results from a voluntary submission of the question to the Adjustment Board. It would seem clear that the award of a body, having a function of such importance as that recourse to it is requisite even before the institution of litigation in bankruptcy (Pitney case, supra), or State (Slocum case supra) Courts, is entitled to receive the finality provided by the statute against one who voluntarily invokes its jurisdiction.

"As we view the matter, there is no occasion for any examination of the constitutional question sought to be presented, for the appellant having presented and prosecuted his claim, in the manner provided by the statute, which eventuated in an adverse award, must be held by such conduct and election to have waived the right to assail the constitutional validity of the manner and extent of redress afforded by the terms of the statute under which he proceeded. Wall v. Parrot Silver & Copper Co., 244 U. S. 407, 411, 37 S. Ct. 609, 61 L. Ed. 1229, and citations; Booth Fisheries v. Industrial Comm., 271 U. S. 208, 46 S. Ct. 491, 70 L. Ed. 908, and citations; Eliason v. Wilborn, 335 Ill. 352, 167 N. E. 101, 68 A. L. R. 350, and opinion affirming at 281 U. S. 457, 50 S. Ct. 382, 74 L. Ed. 962. We therefore do not consider the attack upon the constitutionality of the statute."

To the same effect is *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13 (5th Cir. 1956), *cert. denied*, 351 U. S. 925 (1956).

A closely analogous case is *Bower* v. *Eastern Air Lines*, *supra*, in which the Court of Appeals for the Third Circuit held that an adverse decision by the same Adjustment Board involved in this case was binding on the plaintiff, and that the Court had no jurisdiction to consider his claim for reinstatement or damages.

Other cases which hold that submission of a claim to an Adjustment Board under the Railway Labor Act is an election of remedies and that the adverse decision of the Adjustment Board is binding and precludes court action are as follows:

Berryman v. *Pullman Co.*, 48 F. Supp. 542 (W. D. Mo. 1942)—an action for reinstatement with back wages;

Hargis v. *Wabash R. R.*, 163 F. 2d 608 (7th Cir. 1947)—an action to determine employee rights under a collective bargaining agreement;

Ramsey v. *Chesapeake & O. R. R.*, 75 F. Supp. 740 (N. D. Ohio 1948)—an action for reinstatement and back wages;

Kelly v. *Nashville, C. & St. L. Ry.*, 75 F. Supp. 737 (E. D. Tenn. 1948)—an action for reinstatement and back wages;

Reynolds v. *Denver & R. G. W. R. R.*, 174 F. 2d 673 (10th Cir. 1949)—an action for reinstatement and back wages;

Hecox v. *Pullman Co.*, 85 F. Supp. 34 (W. D. Wash. 1949)—an action for reinstatement and back wages;

Warmack v. *Loftin*, 19 Labor Cases 66,159 (S. D. Fla. 1951)—an action for reinstatement and back wages;

Hartley v. *Pan American Airways, Inc.*, 98 F. Supp. 247 (N. D. Cal. 1951)—an action for reinstatement and back wages;

Williams v. *Atchison, T. & S. F. Ry.*, 204 S. W. 2d 693 (Mo. Sup. Ct. 1947)—an action to determine seniority rights of employees.

The question as to finality of a decision of an adjustment board has not been definitely decided by the Supreme Court. However, it should be noted that in *Elgin, J. & E. Ry.* v. *Burley*, 325 U. S. 711 (1945), the majority of the Court specifically reserved the question of finality as being unnecessary for decision in the case (325 U. S. 720 and

749), and the four dissenting justices stated positively their belief that the denial of a money award by an adjustment board is final and is not subject to judicial review (325 U. S. 760-761). It should be further noted that the majority opinion in that case was written by Mr. Justice Rutledge who, as a member of the Court of Appeals for the District of Columbia, said in *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235, 244 (App. D. C. 1941), affirmed by equally divided court, 319 U. S. 732 (1943), that "The *Moore* decision holds that Congress has not compelled disputants to go before the Board. It does not hold that, having gone, they can disregard the award and its consequences at will." The virtually unanimous decisions of other courts that submission of a claim to an adjustment board is an election of remedies which bars court action is wholly consistent with the decisions of the Supreme Court holding that the courts should refrain from acting on labor relations disputes—and particularly matters such as Woolley's which require interpretation of collective bargaining agreements —as to which the Railway Labor Act provides an adequate procedure for settlement. See for example: *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338 (1943); *General Committee* v. *Missouri-Kansas-Texas R.R.*, 320 U. S. 323 (1943); *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297 (1943); *Slocum* v. *Delaware, L. & W. R.R., supra; Order of Railway Conductors* v. *Southern Ry.*, 339 U. S. 255 (1950); *Order of Railway Conductors* v. *Pitney*, 326 U. S. 561 (1946).

While this Court has not directed its attention specifically to the problem here involved, the Court's decision in *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad*, 353 U. S. 30 (1957) indicates rather clearly that this Court considers an Adjustment Board decision to be conclusive. After referring to the pertinent

provisions of Section 3 of the Railway Labor Act, this Court had the following to say (353 U. S. 34):

> "This language is unequivocal. Congress has set up a tribunal to handle minor disputes which have not been resolved by the parties themselves. Awards of this Board are 'final and binding upon both parties.' And either side may submit the dispute to the Board."

Woolley appears to argue that he never had an opportunity to elect his remedy (Court action for wrongful discharge, or Adjustment Board for reinstatement and back pay), and that because of the lack of opportunity for election of remedies, the decision of the Adjustment Board was void and of no effect. Woolley argues that "no specific charges" were filed against him and therefore he was in no position to make an election. Of course, it appears clearly from the record that Woolley received notice of specific charges against him (R. 368). He fully understood that his employment had been terminated, and requested a hearing as provided by the contract in case of dismissal (R. 367). Woolley further appealed from such termination to the Adjustment Board and submitted the entire issue as to the validity of such termination to that Board.

The time for election of remedies in a case of this type under the Railway Labor Act is now well-settled. An analysis of the numerous decisions dealing with the question indicates that the election must be made, in some cases, *after* exhaustion of intra-company grievance procedures, and may be made, in some cases, before exhaustion of intra-company grievance procedures, but in *all* cases *must* be made *before* appeal to the Adjustment Board. See the following decisions:

> *Kelly* v. *Nashville, C. & St. L. Ry.*, 15 Labor Cases 64,746 (E. D. Tenn. 1948);

Wilson v. *St. Louis-S. F. Ry.*, 247 S. W. 2d 644 (Mo. 1952);
Keel v. *Illinois Terminal R.R.*, 346 Ill. App. 169, 104 N. E. 2d 659 (1952);
Transcontinental & Western Air v. *Koppal*, 345 U. S. 653 (1953);
Mayfield v. *Thompson*, 262 S. W. 2d 157 (Kansas City Ct. of App. 1953);
Ringle v. *Transcontinental & Western Air*, 113 F. Supp. 697 (W. D. Mo. July 27, 1953);
Bower v. *Eastern Air Lines*, 214 F. 2d 623, 626 (3rd Cir. 1954), *cert. denied*, 348 U. S. 871 (1954).

Woolley relies upon the decision of *Rychlik* v. *Pennsylvania Railroad Company*, 229 F. 2d 171 (2d Cir. 1956), *reversed on other grounds*, *Pennsylvania Railroad Company* v. *Rychlik*, 352 U. S. 480 (1957). The Court of Appeals held that there could be review of a decision of an Adjustment Board made up of those whose interests squarely conflicted with those of the aggrieved employee. Here, no suggestion of conflict of interest has been, or could be, made. The Supreme Court reversed on other grounds and did not consider the question which the Court of Appeals had decided. However, in a concurring opinion, Mr. Justice Frankfurter made the following statement which is pertinent to the present case (77 Sup. Ct. p. 431):

> "The determination of the System Board on the merits is not open to judicial review, even on so-called legal questions. It is not for a court to say that a complaint against the System Board must fail because the System Board rightly held against the complainant. Right or wrong, a court has no jurisdiction to review what the System Board did . . ."

Similarly, the case of *Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 755 (D. C. Cir. 1949) does not aid Woolley. In that case also there was a direct conflict of interest between

the aggrieved employees and the members of the Adjustment Board. Holding that there could be limited judicial review in that case, the court was very careful to limit the scope of its decision, stating (176 F. 2d 762):

> "To emphasize the narrow limits of our present ruling, we point out that we are not dealing with a case where there was merely a dispute between a company and its employees, in which the union represented the employees; or with one in which the union assumed a bona fide neutral position in a dispute between employees. This case, we repeat for emphasis, concerns the rights of a few non-members of a union in a proceeding in which the union aggressively presented and pressed the claims of its members adverse to the claims of these appellant non-members, under a contract negotiated by the union, and before a board upon which two of the four members were union representatives."

All of the above authorities establish beyond question that Woolley has made an irrevocable election of the Adjustment Board remedy, is bound by the adverse decision of the Adjustment Board, and had no right to present the same issues again to the trial Court.

IV.

Woolley's resignation and the acceptance thereof were valid and effective, and the Adjustment Board properly upheld the acceptance of the resignation.

Woolley appears to contend that he did not submit to the Adjustment Board the issue as to validity of the resignation, but that he challenged the jurisdiction of the Adjustment Board to decide such an issue. As shown in the record of this case, Woolley actually requested the Adjustment Board to decide *all* questions relating to the

legality of his separation from his employment, and he specifically requested the Board to hold that the resignation was improper and illegal (R. 363-365, R. 102-104). Thus, there clearly is no merit in Woolley's present suggestion that any action or protest of his before the Adjustment Board deprived that Board of jurisdiction.

Woolley suggests (R. 9) that the resignation "contravened both the letter and the spirit of the Railway Labor Act and the spirit and letter of the right protected and guaranteed to plaintiff under the provisions of the laws of the United States" as well as the contract itself. It is impossible to ascertain what provision of what law Woolley thinks has been violated. No law prohibits an employee from resigning or an employer from accepting his resignation. The Railway Labor Act does not prescribe any set procedure whereby an employee's services may be terminated. It simply provides (Section 204, 45 U. S. C. 184) that disputes and grievances "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes," and "may" thereafter be appealed to the Adjustment Board. Woolley's 1950 grievance was "handled in the usual manner" and the ultimate decision of the chief operating officer was accepted by Woolley and his bargaining representatives. Even the nature of the settlement was "usual" as shown by Mr. Shannon's affidavit appended to the Answer of Eastern *et al.* in the District Court (R. 348).

The Railway Labor Act does not set up any code of conduct or procedure which might be deemed to prohibit either the 1950 settlement of Woolley's grievance or his resignation which was a part of that settlement.

In *Hetterbaugh* v. *Air Line Pilots Association*, 189 F. 2d 319, 321 (5th Cir. 1951), the Court had the following to say on this subject:

"As stated by the Supreme Court in Terminal Railroad Ass'n of St. Louis v. Brotherhood of Railroad Trainmen, 318 U. S. 1, at page 6, 63 S. Ct. 420, at page 423, 87 L. Ed. 571: 'The Railway Labor Act, like the National Labor Relations Act [29 U. S. C. A. §151 et seq.] does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce.'

"There is no allegation here that the bargaining agreement between the parties discriminated against the appellants. At most, there is an allegation of a breach of the bargaining agreement. Any right of action, if one exists, is based on the alleged breach of the bargaining agreement, and does not arise under the Railway Labor Act, but only from the consequent contractual relations of the parties. The federal courts are not charged by federal law with the duty of policing parties in the performance of collective bargaining agreements entered into pursuant to the Railway Labor Act. See Hayes v. Union Pac. R. Co., 9 Cir., 184 F. 2d 337."

It should be emphasized that the 1950 settlement, of which Woolley's resignation was a part, was negotiated *by the collective bargaining representative*, certificated under the Railway Labor Act, and was *accepted by Woolley himself*. To the extent that Woolley was thereafter subject to different terms and conditions than other pilots, insofar as separation from employment is concerned, he has no grounds for complaint, as he consented to those conditions.

and it has been held repeatedly that collectively-negotiated agreements need not affect all individuals and classes alike. *Virginian Railway* v. *System Federation No. 40*, 300 U. S. 515, 548-549 (1937); *Ford Motor Co.* v. *Huffman*, 345 U. S. 330 (1943); and *Pellicer* v. *Brotherhood of Railway Clerks*, 118 F. Supp. 254 (S. D. Fla. 1953), *affirmed*, 217 F. 2d 205 (5th Cir. 1954).

But even if there were thought to be in this case a serious issue as to whether the resignation "contravened both the letter and the spirit of the Railway Labor Act", that issue was freely and fully presented by Woolley to the Adjustment Board, was within its jurisdiction, and was decided by it in a way which is binding on him. As stated by Chief Judge Parker in *Alabaugh* v. *Baltimore & Ohio R.R.*, 222 F. 2d 861, 866 (4th Cir. 1955):

> "There is no reason why the Board should not consider all rights, statutory and constitutional as well as others, in making its determination."

The cases cited by Woolley purporting to show that his resignation was invalid are believed to be completely irrelevant. Cases under civil service or tenure laws obviously have no relationship to this case, as there is no declared statutory public policy applicable to this case which requires any set procedure or grounds for termination of employment.

Is there anything in the collective contract which prohibits the resignation here involved? Woolley appears to rely on Section 29 A of the contract which states that "A pilot shall not be disciplined or dismissed from the Company without notification in writing . . . and . . . without an investigation and hearing" if the pilot so requests. If that provision is deemed to apply to the resignation here involved—on the theory that it was a "dismissal", as Wool

ley apparently contends—it quite clearly has been complied with. Woolley was given written notice of the Company's action. He was also given an investigation and hearing at his request. He has recognized the regularity of the proceedings in many ways, including his appeal to the Adjustment Board.

The contrac. does not *specify* that discharge may occur only for "cause", and to the extent that the requirement of "cause" may be implied from the hearing procedures, the contract certainly does *not* say what quality or degree of "cause" may be required in any case. That is, of course, a matter for interpretation and decision by the Adjustment Board in cases referred to it.

Here, the Adjustment Board has held that the Company had "good and sufficient reasons" for separating Woolley from the employment. That finding surely is adequate to meet any implied requirement that the Company have "cause" for separating the employee.

Woolley appears to suggest (Petition, pp. 23-24) that the letter of resignation authorized a discharge without cause. The Adjustment Board found to the contrary, for it stated (R. 88):

> "2. That the letter of resignation . . . was intended by all involved . . . to be accepted by the Company for good and sufficient reasons but not arbitrarily or capriciously."

The evidence clearly supports that finding. Thus, if the contract were deemed to prohibit an arbitrary or capricious "dismissal by acceptance of a resignation" or any separation without "cause", the transaction here involved is not prohibited but meets every conceivable required standard.

Woolley states (Petition, p. 28) that a resignation such as Woolley's is a "nullity". We have found no pertinent au-

thority which would suggest such a conclusion. The Railroad Adjustment Board case cited by Woolley (Petition, p. 23) simply holds that where, *contrary to the accepted practice,* a resignation was used *immediately* to sever the employment after impliedly representing to the employee that he could continue indefinitely as had always been true with other employees who signed similar resignations, the employer was guilty of bad faith and trickery and the resignation could not be upheld. Certainly no such suggestion could be made in this case, where Woolley was allowed to remain on the payroll for nearly six years and then severed only for "good and sufficient reasons."

The applicable statute and contract plainly permit the type of separation here involved and the Adjustment Board had jurisdiction to determine that issue.

CONCLUSION

The Adjustment Board had full power and jurisdiction to determine the questions submitted to it by Woolley in his appeal to that Board. Woolley voluntarily submitted the case to the Adjustment Board, and such submission constituted an irrevocable election of the Adjustment Board remedy which precludes court action. Moreover, even if the decision of the Adjustment Board were reviewable, it is clear that that decision was right.

Petitioner has presented no grounds for the granting of certiorari, as the legal principles followed by the lower court are well established and no important Federal question is raised which needs to be settled by this Court. Therefore, the petition for writ of certiorari should be denied.

Position of Other Respondents

Respondents Air Line Pilots Association, R. W. Rivenbark and R. M. Tedlock are not filing a separate brief in opposition to the petition for writ of certiorari. The foregoing brief has been submitted to such Respondents in draft form, and we are authorized to state that Respondents Air Line Pilots Association, R. W. Rivenbark and R. M. Tedlock concur in the conclusions stated in the foregoing brief.

Respectfully submitted,

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I hereby certify that copy of the foregoing brief has been served on:

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by depositing same in a United States post office, with first class air mail postage prepaid, addressed to such counsel at the addresses indicated. This 28th day of March, 1958.

W. GLEN HARLAN
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